

Topsfield Zoning Board of Appeals

December 22, 2009

Chairman Moriarty called the meeting to order at 8:00 PM. Board members present were Bob Moriarty, Kristin Palace, Tony Penta, Lisa Stern-Taylor and Scott Dow. Roberta Knight, Community Development Coordinator was also present as well as the applicants, their representatives and interested residents. See attendance sheets for specific public hearings.

Minutes:

Chairman Moriarty made the motion to approve the minutes of September 2, 2009 as written; seconded by Clerk Kristin Palace; so voted 5-0.

Chairman Moriarty made the motion to approve the minutes of September 22, 2009 as amended; seconded by Clerk Kristin Palace; so voted 5-0.

46R Main Street: At 8:00PM, Chairman Moriarty called to order the public hearing to consider the application of Mary Bandereck for premises located at 46R Main Street requesting a special permit pursuant to Article V, Section 5.04 and Article III, Table of Use Regulations, Section 4 Retail and Service, Sub-section 4.34, Catering; and site plan review pursuant to Article IX of the Zoning Bylaw.

The Board reviewed the application, business plan, and site development plan submitted by the Applicant for the premises at 46R Main Street. Ms. Bandereck noted that the building had formerly been used as a cabinet shop and a machine shop. Ms. Bandereck proposes to install a commercial kitchen at the site. She intends to operate a catering business, preparing baked goods on site and selling these items in bulk. Ms. Bandereck also makes bridal cakes to order. Items would be picked up (by appointment) or delivered. New Meadows Market currently serves as Ms. Bandereck's primary retail outlet. The Board of Health has determined that the existing septic system has adequate capacity for the commercial kitchen. Entry would be through the front of the building (which faces the rear of the "bagel shop"), parking on the sides of the building for employees and customer pick-up, and delivery of raw product materials through the rear entrance.

Ms. Bandereck noted that she would like to sell excess products directly to customers and asked if she could be permitted as a retail bakery. The Board reviewed the site plan and determined that the site, as currently configured, did not meet the public safety requirements for a retail bakery. The site would require improvements for parking and access restrictions. Exterior renovations might also be required. Ms. Bandereck explained that she did not wish to operate a typical retail bakery, but only wanted the ability to sell excess products in bulk upon request to catering customers when said

products were available. The Board determined that the sale of excess bulk product to existing customers would be permissible under the wholesale catering use.

The hours of operation were discussed and based on the type of operation the Board determined that operating hours from 4AM to 10PM fell within the parameters of the requested catering use.

No one appeared at the meeting to oppose Ms. Bandereck's proposal.

The Board found that the proposed business is compatible with the other businesses in the Topsfield Village and will not have a detrimental impact on any residential neighbors. Chairman Moriarty moved that the Board adopt the foregoing findings and grant a special permit pursuant to Article V, Section 5.04 and Article III, Table of Use Regulations, Section 4 Retail and Service, Sub-section 4.34, Catering as shown on the submitted business plan and site plan and subject to the following conditions:

- This special permit allows a catering use operation for a commercial kitchen used for the specific preparation of wholesale baked goods and specialty cakes.
- Items would be picked-up or delivered to clients.
- This permit allows for the sale of excess bulk items when available to clients upon request.
- Parking will be around the perimeter of the building (46R Main Street) as shown on site plan.
- All dumpsters and snow storage presently located around the premises in the parking area as designated on the site plan are to be removed. Snow shall not be accumulated in the designated parking area.
- Hours of operation shall be 4AM to 10PM, seven (7) days per week.

The motion was seconded by Clerk Kristin Palace; so voted; 5-0

17-19 Main Street Re: New Meadows Market: At 8:45PM, Chairman Moriarty called to order the public hearing to consider the application of New Meadows Market LLC represented by Therese Lee Carabillo for premises located at 17-19 Main Street requesting a special permit pursuant to Article V, Section 5.04 and Article III, Table of Use Regulations, Section 4 Retail and Service, Sub-section 4.12E Retail Specialty Foods to allow the "the preparation and sale of a limited menu of food items as a secondary use to the primary business of a grocery store as set forth in the Zoning By-law.

The Board reviewed the application for a retail specialty foods operation within New Meadows Market with the Applicant. Ms. Carabillo, representing the Applicant, informed the Board that New Meadows Market temporarily closed for the demolition and reconstruction of a new building at 17-19 Main Street. The building is owned by Riversky Realty Trust. The Market will now be located in the first floor unit of the new

building at the corner of Main and Central Streets. The Board has previously permitted this building for retail use on the first floor. New Meadows Market is a retail gourmet shop and is seeking a special permit for the associated use for the sale of food as a restaurant under the sub-category of retail specialty foods.

The Market had operated a prepared take-out business as part of its original business operation prior to its temporary closing. Due to the revision to the Town's Zoning Bylaw at the 2009 May Annual Town Meeting, the Market must now obtain a new special permit under the "Restaurant: Retail Specialty Foods" designation for this operation to resume in the new building.

Ms. Carabillo explained that the same food products would be sold as previously but on a larger scale. Since there is a larger floor space, additional non-food items would be added such as candles. The hours of operation would remain the same from 7AM to 7PM Monday thru Saturday.

In response to inquiry relative to accessibility, Ms. Carabillo noted that there are two public entrances to the store. The main entrance is at the front of the building. Handicapped access is through a door on the Central Street side of the building. The handicapped entrance leads directly to the elevator lobby area. A door in the lobby connects to the Market. Patrons would be encouraged to use the front door with the side access reserved for handicapped accessibility. There is a rear entrance for employees and for deliveries.

The Board found that the proposed business is compatible with the other businesses in the Topsfield Village and will not have a detrimental impact on any residential neighbors. Chairman Moriarty moved that the Board adopt the foregoing findings and grant a special permit pursuant to Article V, Section 5.04 and Article III, Table of Use Regulations, Section 4 Retail and Service, Sub-section 4.12E, Retail Specialty Foods subject to the following conditions:

- The primary business operation shall remain as a retail specialty food shop with the sale of the same or similar product line as sold previously that would include, but not be limited to: quality meats, dairy, vegetables, processed food items, baked goods, beverages and non-food items purchased wholesale for retail sales.
- Pursuant to the Topsfield Zoning Bylaw, Article 1, Definitions, Section 1.83E, a "Retail Specialty Foods" store is permitted to offer a limited menu of food items which may be consumed on or off the premises, provided that "the preparation and sale of a limited menu of food items is secondary to a primary business ... such as a grocery store, gourmet shop or farmer's market." As such, and in accordance with the Bylaw, the restaurant operation is limited as follows: 1. food orders shall be placed at a counter; 2. the food will be primarily intended for immediate consumption; 3. the food will be available

after a short wait time; and 4. the food will generally be paid for in advance of consumption.

- The hours of operation shall be 7 AM to 7 PM, Monday thru Saturday.

The motion was seconded by Member Lisa Taylor; so voted; 5-0.

Minutes Continued:

Chairman Moriarty made the motion to approve the minutes of October 27, 2009 as written; seconded by Member Scott Dow; so voted 5-0.

Chairman Moriarty made the motion to approve the minutes of November 24, 2009 as amended; seconded by Member Scott Dow; so voted 5-0.

The meeting was adjourned at 9:42 PM

Respectively submitted,

Roberta M. Knight
Community Development Coordinator