

Town of Southborough
BOARD OF APPEALS

SOUTHBOROUGH, MASSACHUSETTS 01772

James Hegarty
Town Clerk
Town House
Southborough, MA 01772

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2017 MAY 31 P 3:15

SOUTHBOROUGH, MA

May 31, 2017

Notice of Decision on Appeal Of Building Inspector's Failure to Issue Decision

Property Address: 4 Park Central Drive

Appellant(s): Park Central, LLC; Capital Group Properties, LLC; William A. Depietri
(hereinafter, collectively the "Appellant")

Appeal Filed: January 10, 2017

The Board advertised the public hearing to begin on February 14, 2017 at 7:05 pm in the Public Meeting Room of Southborough Town Hall with regard to the following appeal:

Appeal: Failure of Building Inspector to issue a decision pursuant to Mass. Gen. Laws c. 40A, § 7 to enforce Town By-Law Sec. 174-10.F (constructive approval of site plan)

Sitting as a Board: Andrew R. Dennington, Chairperson
Deborah DeMuria
Paul N. Drepanos
Craig Nicholson
David Williams

For the Appellant(s): Angelo P. Catanzaro, Esq.
100 Waverly Street
Ashland, MA 01721

William A. Depietri
Developer/Owner
Capital Group Properties
259 Turnpike Road, Suite 100
Southborough, MA 01772

Daniel Ruiz
Project Manager
Capital Group Properties
259 Turnpike Road, Suite 100
Southborough, MA 01772

Procedural History:

1. On or about May 13, 2016, the Appellant filed an Application for Major Site Plan Approval with the Planning Board.
2. The Planning Board opened the public hearing on Appellant's Application for Major Site Plan Approval on June 20, 2016. Continued public hearings were held on July 18, 2016 and August 15, 2016. At the August 15, 2016 meeting, the Appellant presented the Planning Board with a revised set of plans. The Planning Board voted to continue the public hearing on Appellant's Application for Major Site Plan Approval until September 19, 2016.
3. On September 19, 2016, the Planning Board held a continued public hearing to consider Appellant's Application for Major Site Plan Approval. At that hearing, the Applicant and the Planning Board executed a "Request for Continuation/Extension of A Public Hearing" form stating that "The time that the [Planning] Board shall have to reach a decision on the matter(s) shall be extended under Sept. 30, 2016."
4. The Planning Board held continued hearings on September 26, 2016 and September 29, 2016 to consider Appellant's Application for Major Site Plan Approval. At the September 29, 2016 hearing, the Planning Board indicated that it believed that Capital Group failed to present its applications and plans pursuant to the Town's Zoning By-Law and requested additional time to review the final project and draft conditions. Mr. Depietri, on behalf of the Appellant, indicated that he was not agreeable to granting the Planning Board any further extensions of time on this matter. At that meeting, Planning Board voted to reject site plan approval. Appellant's attorney was present at the September 29, 2016 hearing at which that vote was taken, and was aware of the vote to reject.
5. On October 28, 2016, the Appellant filed with the ZBA an appeal pursuant to Sec. 174-10.G of the Town's Zoning By-Law (hereinafter the "First Appeal"), indicating that the decision being appealed was: "Planning Board Rejection of Park Central Site Plan Approval on September 29, 2016." In its First Appeal, the Appellant asked the ZBA to declare that its site plan already had been constructively approved pursuant to Section 174-10.F of the Town's Zoning By-Law.
6. Additionally, on November 18, 2016, Appellant's counsel wrote a letter to the Building Inspector, Mark Robidoux, asking him to declare that Appellant's site plan had been constructively approved pursuant to Section 174-10.F of the Town's Zoning By-Law because of the Planning Board's failure to take certain action.
7. Mr. Robidoux responded by e-mailing Appellant's counsel a copy of Planning Board's "Decision of Major Site Plan Approval" dated November 17, 2016. Mr. Robidoux otherwise did not respond to Appellant's November 18, 2016 letter.
8. On January 10, 2017, the Appellant filed this second appeal pursuant to Mass. Gen. Laws c. 40A, § 8 of the Building Inspector's failure to declare the site plan constructively approved.

9. Meanwhile, on the First Appeal, the ZBA heard extensive presentations and arguments concerning the issue of possible constructive approval at a hearing on January 18, 2017.
10. The ZBA duly noticed and advertised the public hearing on this second appeal under Mass. Gen. Laws c. 40A, § 8 to commence on February 15, 2017. The ZBA held continued hearings on April 12, 2017 (continuance) and May 17, 2017, at which time the ZBA closed the public hearing on both appeals.
11. In the First Appeal, on May 17, 2017, the ZBA voted 4-1 (Drepanos opposed) to find that the Appellant's site plan had not been constructively approved pursuant to Section 174-10.F of the Town's Zoning By-Law.

Plans/ Documents:

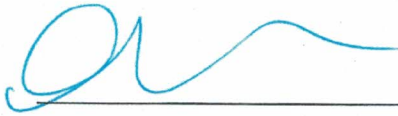
1. Letter from Attorney Angelo P. Catanzaro to Andrew R. Dennington, Chairman dated April 3, 2017 (attachments nos. 1 thru 13)
2. Letter from Attorney Gary Brackett to Andrew R. Dennington, Chairman dated April 10, 2017
3. Forwarded email from Don Morris, Planning Board Chairman, dated April 10, 2017

Findings:

1. Section 174-10.F states in relevant part: "The Planning Board shall act on an application for site plan approval and shall notify, in writing, the applicant, the Board of Selectmen and the Building Inspector of its action within 60 days of the receipt of the application. Failure of the Planning Board to so act and to notify the applicant within said 60 days shall constitute approval of the site plan."
2. Here, the deadline for the Planning Board to "act" within 60 days of the receipt of the application (i.e. by some date in mid-July, 2016) was extended by the Appellant. The extended deadline for the Planning Board to "act" was September 30, 2016. The Planning Board did "act" on September 29, 2016 by taking a vote to reject site plan review.
3. The ZBA could not identify any extended deadline that the parties agreed upon for the issuance of a written decision after such action was taken.

Decision and Vote of the Board:

At its meeting on May 17, 2017, and after review of all evidence and facts presented at this hearing, and after deliberations on the same, on a motion by Mr. Nicholson and seconded by Mr. Drepanos, the Zoning Board of Appeals voted unanimously (5-0) to **DENY** the Appellant's appeal.



Andrew R. Dennington, Chairperson
Signing on behalf of the Zoning Board of Appeals

****NOT VALID FOR RECORDING UNTIL CERTIFIED BY THE TOWN CLERK OF
SOUTHBOROUGH****

In accordance with Sec. 11 of Ch. 40A of Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Southborough Town Clerk, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Attest: _____

James F. Hegarty, Town Clerk

_____ Date

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