

**MINUTES OF PUBLIC HEARING
HELD BY THE PLANNING AND ZONING COMMISSION
JANUARY 3, 2011**

ROLL CALL:

Members Present: Joseph Diminico, Chairman
Kevin Dougan, Vice Chairman
Andy Kidd, Secretary
Eric Prause
Horace Brown

Alternates: Susan Shanbaum
John Chaput

Absent: Anthony Petrone

Also Present: Mark Pellegrini, Director of Planning
Renata Bertotti, Senior Planner
Matthew Bordeaux, Environmental Planner
and Wetlands Agent
Ginger MacHattie, Recording Secretary

The Chairman opened the Public Hearing at 7:03 p.m. The Secretary read the legal notice for the application when the call was made.

McKEE BROTHERS, LLC – 435 West Center Street – to approve existing placement of three 8’ x 40’ metal outdoor storage containers – Special Exception (M-385)

Attorney Joel Janenda, 249 East Center Street, spoke on behalf of the McKee Brothers, James and Todd. The brothers own two businesses, a landscaping/lawncare company and an automotive business. In 2005, a special permit was received for the property by Trashaway, a trash hauling company that was located on the property before the McKee’s purchased it. This application pertained to three storage containers, he said.

In May 2010, Mr. James McKee received approval to sell used cars as well as perform auto repair. During that application, the Zoning Enforcement Officer notified the applicant that the three storage containers on the property required a special permit application and approval. Wetlands and flood plain permits are also required.

Attorney Janenda referred to a map and pointed out Hop Brook to the right of the buildings on the McKee’s property. On the flood map provided by FEMA, a considerable amount of the McKee property is in the flood plain, he said. The applicant retained Holmes & Henry to do field survey work. In the area where the containers are located, the elevation is 97’ and 98’ while the flood elevation is 96.75’. Since these containers are not in the exposed flood area, no flood proofing is needed.

Attorney Janenda stated the containers are not in the wetlands area but are in the upland review area. He said they are sealed metal containers there is no excavation, no fill or movement of the containers proposed by the owners. The containers sit on a gravel and stone base and have since at least 1989 when this part of the lot was used for parking.

Attorney Janenda said that in 2008 the Town did a sewer project involving the brook near this property. The sewer line runs through the rear, northerly portion of this property. There is a 30' wide utility easement for that purpose. A narrative detailing existing wetland conditions was submitted as part of the Town's application for that project. The assessment described the wetlands' primary function to be storm water conveyance. Further, the assessment indicated no significant or important wildlife was in this area. The embankment on the west side of the brook was stabilized by large stone and erosion control matting, with grasses suitable for slopes planted. He said the storage containers pose no threat to the wetlands. No activity is planned in the wetlands and placing of the containers on stone and gravel poses no disturbance of any kind.

The wetlands application will require the Planning and Zoning Commission to determine whether there will be any significant impact on the wetlands.

Attorney Janenda said the regulations allow storage of equipment as a special exception. These units provide secure storage, which is a very important part of the McKee's business. The fourth storage container shown on the plan was approved in 2005. At that time, it was shown on the plan and was approved as part of the site approval. The container has been there 25 or 30 years. The applicant agreed to amend this application and include the fourth container as part of the wetlands and flood plain application; but not as part of the special permit application.

In response to a question from Mr. Diminico, Attorney Janenda explained that the fourth container has been there. He assumes the previous owners put it there.

He read in the memorandum from Town staff that the Engineering Department requested the blocks on the Town's easement be relocated and asked if that has happened yet. Ms. Bertotti answered in the negative. Attorney Janenda said the Town does have an easement and it has a right for it to be unobstructed. The document that created the easement reserves the right of the owner of the land to continue to use it. Because the sewer line is well below the surface, the property owner did not think it presented any problem to use the land. Mr. Diminico understands that is not part of the application but asked if the blocks are easily moveable.

Randy Becker, Professional Engineer, explained that the blocks are commonly used to contain loose bulk materials. Many landscaping companies make bins out of the blocks. Each block is 2' x 2' x 5' and weighs approximately 3,000 to 4,000 lbs. They are very easily moved with a small machine and it would be well within the applicant's ability to move them should the need arise. By using these blocks for containment, the surrounding areas are protected. A dump truck actually poses more threat.

Mr. Prause noted the storage units are above flood level and asked what types of materials are stored in them. Attorney Janenda responded, plows, mowers, weed whackers, and the like. The containers keep the equipment in a safe, secure place out of the weather. The containers are sealed. Mr. Becker added that the containers are ocean-going sea to land transport boxes and are sealed from the weather. They are as tight, or tighter, than a garage or shed that would otherwise be used. The containers are above base flood elevation. There is no reason to be overly concerned about potential leaks. There is no storage of large amounts of fuel in the containers, he said.

In response to some questions from Ms. Shanbaum, Attorney Janenda said each container has only one opening. Three of the containers were added to the property in 2007 or 2008, after the 2005 site plan approval. The Zoning Board of Appeals limited the number of cars for sale on the property to six.

In response to some questions from Mr. Kidd, Attorney Janenda said the underlying reason for the containers is the need for storage. The McKee brothers had more storage at a previous location. Since there was already one container on the site, they assumed additional containers would be permissible. When the Town's sewer project was done, bank stabilization work was completed along the brook. This work occurred while the containers were in place, he said.

Chairman Diminico opened the floor for any member of the public wishing to comment in favor of or in opposition to this application. No member of the public came forward to speak.

Mr. Bordeaux stated the existing improved area does not present wetlands characteristics. In addition, mapping of the flood zone makes this difficult because we must make the assumption that this is in a flood plain, even though it has been certified that it is above the flood plain. There is no requirement for these structures to be anchored to the ground; they will not float away. This site has been used as an Industrial use since at least 1987. The gravel area in the rear was used for parking. There was no upland review area until 1989.

There are three outdoor storage containers subject to this application, but also other outside storage items that were not included as part of the special exception request. If the Commission approved this application, it will be only for the three outdoor storage containers. The applicant should then come before the Planning and Zoning Commission for the other outdoor storage items.

The chairman closed the Public Hearing portion of the meeting at 8:29 p.m.

NOTICE: THE CASSETTE TAPE RECORDING OF THIS PUBLIC HEARING CAN BE HEARD IN THE PLANNING DEPARTMENT.

OFFICIAL TAPE NO. 1097