

## Memorandum

To: DRB

From: Peter Erb, Zoning Administrator.

Date: February 28, 2014

Re: Hannaford Applications

There are several legal issues which arise from the subdivision application for the annexation of a portion of the Automotion lot, in the village district, to lot # 15 in the commercial district.

1) As I was reviewing the applicant's response to our questions I realized that there is an official map issue that apparently no one was aware of. The enabling legislation for the Official Map, Title 24, Chapter 117 section 4421 reads as follows: 2) *Changes to the official map. After adoption of the official map, the recordation of plats that have been approved as provided by this chapter, or the adoption of any urban renewal plan under chapter 85 of this title, shall, without further action, modify the official map accordingly. Minor changes in the location of proposed public facilities may also be made to particular sections of the official map if the change is recommended by a majority of the planning commission and approved by resolution of the legislative body. This process may take place concurrently with review of development or subdivision of a parcel that is proposed to be subject to a map change.*

The subdivision application to make lot # 15 larger to accommodate the official map is based on relocating the mapped public facility both from the lot that it was proposed for, and also into a different district. While the DRB can, and has, deemed that the relocation of the facility into the proposed location would accommodate the official map, they can't ratify the changes to the map. That can only be done via the process as described in the legislation.

The legislation does anticipate that this situation may arise, and clearly states that it can take place concurrently with this review before you now. There has been, however, no application made for the minor change to the map. Since any approval of this subdivision application would enable the recording of a plat, final approval of this subdivision application should wait until the relocation has received the necessary approval.

2) The applicant bought lot # 15 with full knowledge that the official map required that a public facility had to be located there. They chose to accommodate this requirement by proposing a farmers market. They also chose to construct a large structure on the property, the use of which required large parking spaces and other infrastructure leaving no room for the farmers market use on the lot as it existed. They are now proposing to make this lot larger so that there is room for all their development as well as the farmers market. The area to be added to this lot is in the Village district which will not permit a structure of over 20,000 square feet but does allow a farmers market as a use. They are claiming that while the over 20000 sq.ft. project can't be located in the portion of the property in the Village district, the farmers market can because the farmers market is a separate purpose from their other development, and allowed on the portion of the property in the village district.

The question is whether it is really separate from the Hannaford project or not. In another situation they might have been separate, however in this case, because of the interdependency of the two purposes, one cannot exist without the other, and as such may not be permitted to spill over into a district where one purpose is not allowed.

The reality of this farmers market is that it isn't a separate entity. The proposed Hannaford project and the farmers market will share parking, access, and other infrastructure. The farmers market itself is encumbered by easements held by the larger project and it legally isn't stand-alone but under control of the Hannaford company.

While the applicant has submitted case law which they say supports their claim, the situation they cite is different. The legalities of this application are not clear and I advise you to seek your own counsel before any decision is made.

### Parking

Everyone agrees the parking area serves three users, Automotion, Giroux and occasionally the town and shared parking is encouraged in our regulations. The issues are how much is needed, where should it be located, and what landscaping is necessary for it.

The applicants requested that the layout should be as informal as possible, with no spaces delineated, no physical boundaries in place, no landscaping within this large parking area. They have not substantiated their request for 59 spaces which is an increase of 28 spaces. While understandably a “free range” parking lot with more spaces than appear to be necessary is desirable for the applicant, it is not in line with other approvals that you have granted or the regulations. There are clear limits on front yard parking and the screening necessary for it.

5.22.2 *Site-level Standards: requires that*

*New parking spaces in front yards of existing buildings (excluding on-street parking spaces) shall be prohibited unless they are well screened and approved by the Development Review Board. On-street parking and shared parking lots shall be utilized when feasible.*

The applicants have stated that there is no definition of a large expanse of parking and therefore there should not be any internal trees in the parking area. While large expanses are not defined please refer to the two illustrations below, one of the recently permitted Hannaford, and the other of this parking area. While the areas are the same, there are approximately 10 trees and none spaced more than 80 feet apart on the approved Hannaford plan and none on Automotion.



