



TOWN OF HINGHAM

Board of Appeals

NOTICE OF DECISION SPECIAL PERMIT A2 MODIFICATION

IN THE MATTER OF:

Applicant and
Property Owner: W/S/M Hingham Properties, LLC
c/o WS Development
33 Boylston Street
Chestnut Hill, MA 02467

Premises: The Derby Street Shoppes
90 Derby Street
Hingham, MA 02043

Deed Reference: Plymouth County Registry of Deeds, Book 30816, Page 261

Plan References: Unstamped, undated plan set entitled: "Derby Street Shoppes," including following drawings: Existing Conditions floor plan, Concept Plan and Elevations, Concept Rendering and Parking Concept.

SUMMARY OF PROCEEDINGS

This matter came before the Board of Appeals (the "Board") on the application of W/S/M Hingham Properties, LLC (the "Applicant") to modify the existing Derby Street Shoppes Special Permit A2, dated February 10, 2003, as amended, to convert an existing retail space within the Shopping Center (Use 4.17) to be occupied by a Tesla Motors Company Showroom/Gallery (Use 5.3) at 90 Derby Street in the Industrial Park and South Hingham Development Overlay District. In conjunction with this Special Permit A2 Modification, the Applicant simultaneously filed an application with the Planning Board for Site Plan Review under § I-G and § I-I, along with a Special Permit A3 Parking Determination under § V-A of the Zoning By-Law (the "By-Law").

The Board of Appeals heard the Special Permit Modification at a duly advertised and noticed public hearing on November 18, 2015 in Hingham Town Hall, 210 Central Street. At the conclusion of the hearing, the Board voted unanimously to conditionally grant the requested Special Permit Modification. In accordance with § I-I, 2.b., the Planning Board first heard its Site Plan Review application on November 16, 2014 and voted to issue Site Plan Approval with conditions.

The Board of Appeals panel consisted of its regular members Joseph M. Fisher, Chairman, Joseph W. Freeman, and W. Tod McGrath. The Applicant was represented by Attorney Robert L. Devin, Derby

Street Shoppes General Manager Bill Hamilton, WS Development Project Manager Andrew Manning, and representatives of Tesla Motors, Inc.

Throughout its deliberations, the Board has been mindful of the statements of the Applicant and the comments of the general public, all as made or received at the public hearing.

BACKGROUND AND DISCUSSION

The Derby Street Shoppes is a Shopping Center allowed by Special Permit A2 under § III-A, 4.17 of the By-Law. The original permit was issued by the Board in 2003 and has been modified on several occasions since.

The present application requests approval to locate a Tesla Motors Company Showroom within an existing retail space formerly occupied by White's Bakery. While this proposed use is permitted by right in the Industrial Park and South Hingham Development Overlay District under § III-A, 5.3, the overall site is subject to the above-referenced Shopping Center Special Permit. The By-Law provides that shopping centers may consist of a mix of uses, including retail stores, commercial service establishments, restaurants, professional offices, financial institutions, indoor amusement or health clubs, hotels, and gas stations, but the use does not include a salesroom for motor vehicle manufacturers. The requested modification would allow the Applicant to overlay an additional use (5.3): Car Dealership) into a portion of the development dedicated to the currently approved use (4.17: Shopping Center).

The Applicant presented evidence to demonstrate that the proposed Tesla Showroom would function more like a traditional retailer (analogous to uses permitted under § III-A, 4.17) than a typical car dealership. By locating in high pedestrian traffic locations, Tesla hopes effectively to market its product to the general public. Tesla's format requires little inventory to be maintained onsite. All orders are custom built and delivered offsite 1-3 months later. The Applicant also represented that there would be no part sales or services provided on site.

The requested modification would result in only minor changes to the site itself. In addition to facade improvements, the proposed plan includes a three-vehicle charging station located to the rear of the showroom and accessed from the Service Road. During the hearing, the Board expressed concern that the charging station may become a destination for electric vehicles, thereby increasing traffic on a driveway primarily intended to serve regular service vehicles and employees of the Shopping Center. The Applicant verified that the charging station was not likely to generate additional vehicle trips since its use would be limited to Tesla by design and its location would not be advertized on the "grid" of available charging stations. The Applicant also agreed not to convert the proposed AC chargers to a "super charger" station (which may have greater potential to attract electric vehicle drivers looking for a quick charge) without the Board's approval.

The proposed plan also includes three "branded" parking spaces in front of the tenant space. While these spaces would be painted with the Tesla colors, the Applicant confirmed that the spaces would not be exclusive to Tesla customers. This branding is subject to review and approval by the Planning Board in a pending Special Permit A3/Parking Determination.

Finally, the application proposed periodic seasonal display of a vehicle on the adjacent sidewalk. The Board discussed this request during the hearing, noting that the existing Special Permit

disallows outdoor display of merchandise. Members noted that the application did not include input from public safety officials relative to the proposed vehicle display and expressed concern about pedestrian access and safety. Public comment raised similar concerns. In response, the Applicant withdrew its request for a display vehicle to be located on the sidewalk.

APPROVAL CRITERIA

Based on the information submitted and presented during the hearing, including public comment, and subject to satisfaction of the conditions set forth below, the Board found that:

a. The proposed use will be in harmony with the general purpose and intent of the Zoning By-Law, for the following reasons:

The proposed modification, namely the addition of a Tesla Showroom (Use 5.3), is consistent with the general purpose of the Zoning By-Law as no adverse impact is expected to the health, safety, or welfare of the prospective customers, neighbors, or the Town.

b. The proposed use complies with the purposes and standards of the relevant specific sections of this By-Law, for the following reasons:

The proposed car dealership is a permitted use in the Industrial Park and South Hingham Development Overlay District.

c. The specific site is an appropriate location for such use, structure, or condition, compatible with the characteristics of the surrounding area, for the following reasons:

The proposed dealership will function much like a traditional retailer. There will be minimal inventory on site as each vehicle is custom made after purchase. Tesla also separates vehicle servicing from sales, so no repairs or maintenance will be offered within the Derby Street Shoppes. The use is compatible with the surrounding Shopping Center.

d. The use as developed and operated will create positive impacts or potential adverse impacts will be mitigated, for the following reasons:

There will be no adverse impact associated with the proposed use.

e. There will be no nuisance or serious hazard to vehicles or pedestrians, for the following reasons:

Employees and customers of the proposed use will utilize the existing access and circulation of the Derby Street Shoppes. Test drives will be pre-scheduled and limited in number.

f. Adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use, for the following reasons:

The Showroom will locate in an existing tenant space which offers adequate and appropriate facilities. Three electric chargers will be installed to the rear of the building to serve the product in an area where sufficient power is available.

g. The proposed Project meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction, for the following reasons:

The existing systems are adequate for the proposed use and do not require modification.

RULINGS AND DECISION

Upon a motion made by W. Tod McGrath and seconded by Joseph W. Freeman, the Board voted unanimously to APPROVE the Special Permit A2 Modification, allowing an existing retail space within the Shopping Center (Use 4.17) to be occupied by a Tesla Motors Company Showroom (Use 5.3), subject to the following conditions:

1. The use shall be operated in a manner consistent with approved plans and representations made during the Public Hearing, such that there would be no inventory of a substantial number of vehicles, no delivery of sold or leased vehicles, no servicing of vehicles and no sale of parts on site.
2. There shall be no display of vehicles on any pedestrian sidewalk within the shopping center without further modification of the Derby Street Shoppes Special Permit dated February 10, 2003, as amended.
3. The rear charging station shall consist of a HPC or High Wall charger and shall not be converted to a super charger without further review by the Board.
4. The Applicant shall monitor use of the charging station and present to the Board any problems associated with the charging station within a year of opening. The Board shall consider appropriate limitations if any, on such charging station provided, however, that no limitation shall limit use of the chargers by Tesla's employees to maintain the charge of vehicles at the Tesla Showroom.
5. The Applicant shall install signage at the location of the chargers to direct drivers to exit the parking area to the right.
6. Any significant changes to the proposed parking plan resulting from the Planning Board's Special Permit A3 Parking Determination for the proposed use shall require additional review by this Board.
7. In accordance with the provisions of the Hingham Zoning By-Law, the conditions imposed in the Planning Board Site Plan Review decision, dated November 18, 2015, are binding conditions to this decision of the Zoning Board of Appeals.

This decision shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed since the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Plymouth County Registry of Deeds and/or the Plymouth County Land Court Registry, and indexed in the grantor index under the name of the record owner or is recorded and noted on the owner's certificate of title.

For the Board of Appeals,

Joseph M. Fisher, Chairman
December 16, 2015