



**ZONING BOARD OF ADJUSTMENT**

**Approved Minutes**

**July 11, 2023 – 7:00 pm @ Community Development Department**

**Physical Location:** 3 North Lowell Road (Community Development Department) Live  
**Broadcast:** WCTV Channel 20 – Local Cable TV  
**Live Stream:** <http://www.wctv21.com/>

**To access via Teams:** [Click here to join the meeting](#)  
**Meeting ID:** 210 221 889 388 **Password:** 2YGui7

**Attendance:**

**Chairperson Michelle Stith- present**

**Vice Chair Betty Dunn- present**

**Neelima Gogumalla, regular member- excused**

**Mark Brockmeier, regular member- present**

**Pam Skinner, Secretary- present**

**Galen Stearns, alternate- present (seated for Ms. Gogumalla)**

**Mike Scholz, alternate- excused**

**Staff:**

**Julie Suech- Planning Technician**

**Rehearing on the following:**

**[Case #10-2023](#) Parcel 17-G-6 & 17-G-20**  
**Applicant – Middlesex Glass Co., Nick Arena**  
**Owner – 106 Indian Rock Rd LLC & GW Trust, Diana Wolthers, Trustee**  
**Location – 102 Indian Rock Road and 82 Range Road**  
**Zoning District – Gateway Commercial District/ WPOD**

Variance relief is requested from Sections 618.2 and 618.3.10 of the Windham Zoning Ordinance (WZO) to construct a 48,000 Sq. Ft. building footprint mixed-use commercial building, that would include the assembly of prefabricated parts. The proposed use is prohibited in the Gateway Commercial District. Furthermore, the WZO prohibits any single structure within the district to have a building footprint of greater than 40,000 Sq. Ft.

The case had been read into the record previously. Attorney John Sokul addressed the Board and is representing the applicant. Attorney Sokul would like Mr. Dubay to come up first to potentially address some of the concerns that the public might have had in the past and moving forward when considering how many people from the public are present this evening.

41 Mr. Karl Dubay from the Dubay Group addressed the Board. Mr. Dubay had packets to distribute to the Board.  
42 Mr. Dubay then gave an overview of the project for both the public and the Board. Mr. Dubay showed the location  
43 of the driveway of the old home on the property. He also stated that they have met with DOT regarding their  
44 proposed driveway. Mr. Dubay stated that Mr. Arena, the applicant, would like to share parking with the Common  
45 Man Restaurant, the abutter to the property. Mr. Dubay stated that there are no wetlands in the area of potential  
46 development; there is some wetland on the property and that has been flagged. The design does not require  
47 anything around the wetland on the property. Mr. Dubay stated that the water on the property flows towards  
48 Canobie Lake, not Cobbetts Pond.

49  
50 Mr. Dubay discussed trucks on the property. Mr. Dubay stated that other potential uses on the property in the  
51 Gateway District include: trucking, retail and call centers which could potentially have higher traffic than this  
52 proposed use of the property. Mr. Arena's business has trucks pull in, load up and move through the site. There is  
53 some delivery from a trailer. Mr. Dubay stated that under the zoning ordinance back-up safety sign noise is exempt  
54 from regulation, but the applicant is willing to modify the back-up system sound; also, the trucks are backing up  
55 towards the highway, not towards the surrounding neighborhoods. Mr. Dubay explained that Nault's, another local  
56 company, does have trucks that back up and block the road and those trucks are backing up closer to the  
57 neighborhood and sometimes block the road. Mr. Dubay also explained that motorcycles are delivered in a crate to  
58 Nault's and assembled in the building, as would be done at this glass company. Mr. Dubay wished to point out that  
59 both of these are different than manufacturing by definition.

60  
61 The caulking used in the process of the applicant's business is not a hazardous material according to Mr. Dubay.  
62 He presented section 16 of the MSDS.

63  
64 Mr. Dubay stated that he spoke with Mr. Tom Paquette who will be restoring the "West House" on the Common  
65 Man property; Mr. Paquette is in support of the project. Mr. Dubay stated that the proposal complies with all  
66 blasting ordinance restrictions and all pre-treatment of water on the site.

67  
68 Mr. Brockmeier asked about the traffic flow pattern and storage of materials and how that might affect traffic flow.  
69 Mr. Dubay stated that this building is larger than the current location of the business; Mr. Dubay stated that there  
70 will be storage in the "L" shape area of the building. Mr. Dubay stated that the storage would not be visible off  
71 site.

72  
73 Vice Chair Dunn asked about Parcel 17 G-20; she wished to clarify that all proposed development is only on  
74 Parcel 17-G-20. Mr. Dubay stated that that is correct. Vice Chair Dunn asked about the watershed maps, not the  
75 drainage direction on site. Mr. Dubay stated that all the proposed construction was in the Canobie Lake watershed.  
76 He could show that looking at the watershed map. Mr. Dubay stated that, based on the topo, the back corner of the  
77 lot would consider to be in the Cobbetts Pond watershed protection area but no construction is proposed on that  
78 area at this time.

79  
80 Vice Chair Dunn stated that she would like the applicant to be specific about how the potential proposal impacts  
81 Cobbetts Pond and the watershed areas. The maps were attached to the rehearing request packet for the Board's  
82 review previously but the map was called up on the screen for the public to view as well. Mr. Dubay explained that  
83 the proposal has protections for both Canobie Lake and Cobbetts Pond. Vice Chair Dunn stated that the watershed  
84 maps were generated before the 93 expansion went through the area. Mr. Dubay confirmed that most of this lot is  
85 in the Canobie watershed.

86  
87 Chairperson Stith invited public comment.

88

89 Mr. Kathleen DiFruscia, Horseshoe Road, addressed the Board. Ms. DiFruscia stated that allowing manufacturing  
90 in the the Gateway District is something that is a serious concern in the area. Ms. DiFruscia stated that many  
91 members of the public are concerned about Cobbetts Pond and will speak to that point as well as others.  
92

93 Attorney Sokul stated that the applicant, Mr. Arena, has committed to not expanding the building or the  
94 manufacturing use and would accept that as a condition of approval.  
95

96 Ms. DiFruscia asked to respond and the Chair allowed that. Ms. DiFruscia stated that the applicant has not yet  
97 acquired the additional 30 acres so she does not see how a condition can be put on that property. Ms. DiFruscia  
98 also stated there is a little more property in the Gateway District.  
99

100 Mr. John Boss addressed the Board. Mr. Boss is concerned about the sight lines in the area and the visibility of  
101 those businesses on the properties.  
102

103 Mr. Jerry Joaquim, 50 Gaumont Road, addressed the Board. Mr. Joaquim is concerned about the impact of  
104 significant weather changes and how that might impact the protection from runoff from development of this  
105 property and the surrounding lake and pond.  
106

107 Ms. Vanessa Nysten, 4 Edgewood Road, addressed the Board. Ms. Nysten stated that she would like to submit a  
108 picture of the current site of the business owner's current location in Tewksbury. Ms. Nysten stated that outdoor  
109 storage is not allowed in the Gateway District. Mr. Nysten stated that the current site of the business looks  
110 industrial. Ms. Nysten stated that the applicant appears to have a business that is definitely manufacturing. Ms.  
111 Nysten is in opposition to the request as presented and briefly summarized the variance criteria.  
112

113 Mr. Louis Perreira, 5 Farmer Road, addressed the Board. Mr. Perreira stated that in the event the applicant grows  
114 out of this space and moves, the approval for manufacturing will remain with the site. Mr. Perreira is also  
115 concerned with traffic on Range Road and the surrounding area. For these reasons, Mr. Perreira is opposed to the  
116 request.  
117

118 A resident from 28 Horseshoe Road, addressed the Board; he would like for the applicant to discuss and clarify the  
119 parking situation in the area and a potential parking lot sharing situation with the Common Man.  
120

121 Mr. Ted Dyer, 28 Turtle Rock Road, addressed the Board. Mr. Dyer appreciates that this company is attracted to  
122 this area but it seems as if there might be a better location in town for the business. Mr. Dyer would like the  
123 applicant to speak to the water source for the site and trees as a buffer in the area. Mr. Dyer is not in support of the  
124 variance request.  
125

126 Mr. Sean Thrasher, 19 Gardner Road, addressed the Board. Mr. Thrasher stated that he is concerned about the  
127 outdoor storage that will be viewable from the highway. Mr. Thrasher is also concerned about the lack of foliage  
128 for much of the year here in New England and that adequate buffers will not be available. Mr. Thrasher is not in  
129 support of the variance request.  
130

131 Mr. Darren Vincent, 29 Sawyer Road, addressed the Board. Mr. Vincent would like to know the height of the  
132 building and the height of the crane. Mr. Vincent would like the hardship redefined by the applicant. Mr. Vincent  
133 is not in favor of the request as presented.  
134

135 Ms. Gina Farrente, 5 Grove Street, addressed the Board. Ms. Farrente stated that the by laws of the Gateway  
136 District speak to the character of the district and this proposal does not appear to comply with this.  
137

138 Ms. Blair McCarthy, 78 Turtle Rock Road addressed the Board. Ms. McCarthy stated she does not believe this  
139 building belongs in the Gateway District as it will be visible from the highway.  
140  
141 Mr. Michael Fontaine, 38 Horseshoe Road, addressed the Board. Mr. Fontaine is opposed to the variance  
142 request as presented. Mr. Fontaine stated that Nault’s existed before the Gateway District and the community has  
143 a choice as to whether or not to allow the building as presented. He believes the building belongs in another district  
144 or another town.  
145  
146 Mr. Vanessa Nysten addressed the Board again to state that outdoor storage is allowed in the limited industrial  
147 area, not in the Gateway District.  
148  
149 Mr. David Tanis addressed the Board via Teams. Mr. Tanis would like to know if there would be any cutting of  
150 metal or welding on the property and what would potentially be done to protect the watershed if this is the case.  
151  
152 Chairperson Stith offered the applicant an opportunity to respond to the public’s questions and comments.  
153  
154 Attorney Sokul stated that he is aware of the level of investment the community has in the project and he  
155 appreciates that, yet, he thinks there are some unfounded fears based on the information presented. Attorney Sokul  
156 stated that this is not manufacturing in terms of chemical inputs and smokestacks. The applicant is taking finish  
157 components and assembling them. Attorney Sokul stated that metal is cut on site and the material is disposed of.  
158 Attorney Sokul stated that the district that the business sits currently in Tewksbury is irrelevant.  
159  
160 Attorney Sokul then spoke to architecture. The applicant received feedback about the design of the building and  
161 changes were made. Attorney Sokul sees this building as attractive and the applicant will need to meet with design  
162 review to make potential changes to the building as needed. This is a conceptual design. Attorney Sokul stated  
163 that this potential variance runs with the land and any applicant would need to comply with the variance request.  
164  
165 Attorney Sokul stated that no one in the public has submitted evidence to refute the protections the applicant has in  
166 place for the watershed or that they will be compromised Attorney Sokul stated that the applicant is willing to treat  
167 groundwater, use porous pavement and make other changes to protect the pond and lake in regards to more  
168 extreme weather events.  
169  
170 Attorney Sokul stated that DOT has said that no changes need to be made to Phase I of the project. Section 618.3.2  
171 of the Gateway District stated that shared parking is allowed. Attorney Sokul stated that there are no plans for any  
172 cranes on the property and the applicant will need to double check on the height of the building.  
173  
174 Attorney Sokul reviewed what processes would be done on the property and that none of those activities would  
175 significantly impact traffic or groundwater; the design of the building is open to design review if the variance is  
176 granted. Attorney Sokul stated that the applicant is interested in complying with all ordinances. Attorney Sokul  
177 reiterated that the applicant is looking for variance relief from the use in the Gateway District and the size of the  
178 building. Attorney Sokul then reviewed the 5 variance criteria as presented in the public packet. Attorney Sokul  
179 stated that there is not untreated run off, noise, increased traffic or pollution impacted the property or surrounding  
180 properties. There is no mitigation required for this use.  
181  
182 Attorney Sokul stated that, regarding the 5<sup>th</sup> criteria, the variance standard has “softened” over time; the special  
183 conditions of this property have to do with the location and the size of the property and the fact that this property is  
184 an island unto itself.  
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186 Attorney Sokul believes that their use of the property has less potential impacts than many allowed uses on the  
187 property.

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Mr. Dubai addressed the Board to discuss lighting on the property. Mr. Dubai stated that there are lighting standards and any plan will be put forward for review to meet all lighting standards. The business will not be open in the evening so the lighting needs will be minimal.

The Board discussed the potential view of the building from the highway and what could be seen. Mr. Dubai explained that the lower elevation makes the building difficult to see from the highway except as you were passing over Range Road. The Board asked if there was another view of the property with less tree cover on the property. Mr. Dubai also explained that “dark sky friendly” and “extreme precipitation rates” are both now the industry standard.

Mr. Nick Arena addressed the Board to answer the question of “why this site”. Mr. Arena stated that there has been a lot of great questions that have been brought up in this process and he thinks this is a great site and he believes in doing what he says he will do as a business owner.

Vice Chair Dunn asked if it would be difficult for the business to comply with the stipulation that no storage be visible from the road. Mr. Arena stated that that would be difficult. Mr. Arena also stated that there was a “crane” on the Tewksbury site to repair the roof and it was a boom lift, not a crane and it was temporarily there for to repair a roof.

Vice Chair Dunn discuss the design of the building and stated she is working through the idea about design but understands this cannot be a condition of variance relief per se. Mr. Dubai spoke to the height of the building and the height of the surrounding trees at the request of the Board. Mr. Dubai stated that it looks like a two-story building. Also, Mr. Dubai spoke to the architectural elements of the building that design review would like to see. Mr. Dubai stated that the applicant is looking for a 2-story building with a roof. The applicant could commit to not doing a completely flat roof on the building.

Attorney Sokul stated that the applicant is going to go before the design review process. The applicant is also willing to meet with the Historic Commission as well. Vice Chair Dunn is asking for the height of the building and the approximate height of the trees. Attorney Sokul stated that the applicant would accept the condition that he purchase both properties. The Board discussed the purchase of both properties and if this should be/could be a condition of approval.

Ms. Nancy Dorman, 48 Gaumont Road, addressed the Board. Ms. Dorman asked how this business might interact with other potential businesses that might come to the area.

Attorney Sokul stated that at the first hearing, there was a vision of what the applicant would like to bring to the area. Those potential projects were presented at that time.

Mr. Fontaine addressed the Board again to ask what restrictions are there on the property if the applicant changes his mind about what he would like on the property at a later time.

Attorney Sokul stated that an applicant can come back before a Board with other potential plans and requests.

Mr. Dyer addressed the Board again to state that the residents of the town are the people left “holding the bag”. Mr. Dyer does not doubt that Mr. Arena is a successful business owner.

The Board and Ms. DiFruscia discussed conditions being put on a parcel if the parcels are owned by two different owners.

238 Attorney Sokul stated that the building is still in the planning phases.  
239  
240 Mr. Arena asked to address the Board to discuss the outside storage. Mr. Arena would be open to screening to  
241 shield the view from Route 93.  
242  
243 Chairperson Stith invited public comment after a brief recess.  
244  
245 Mr. Vincent addressed the Board to discuss the second parcel and Phase II of the project and ask the Board to  
246 consider the potential for less development on the second parcel.  
247  
248 A resident addressed the Board but did not state his name. A precedent has been set on the property which allows  
249 manufacturing on the parcel. He has concerns about the future plans of Phase II.  
250  
251 Mr. Matt Gauthier, 21 Rocky Ridge Road, addressed the Board. Mr. Gauthier does not see a different design in  
252 this second manifestation or rendition of the plan as presented. This is a question for the Board. Chairman Stith  
253 stated that the Board will discuss this in deliberative session.  
254  
255 Attorney Sokul stated that the applicant is willing to comply with the no manufacturing restriction on the second  
256 parcel, yet, they are not willing to agree to the condition of no development.  
257  
258 Vice Chair Dunn asked if the applicants were willing to keep this as 2 lots. Attorney Sokul stated that it did not  
259 matter if the parcel remained as one or two properties. He was willing to allow both lots to be encumbered by no  
260 manufacturing on the second lot. Attorney Sokul is not willing to commit to not moving a lot line in the future.  
261  
262 Mr. Brockmeier would like to consult with town counsel about potential future encumbrances. Mr. Stearns is in  
263 agreement that further consult is necessary.  
264  
265 Attorney Sokul stated that the applicant's preference would be to close the public hearing and consult with counsel  
266 and reopen the public hearing if needed.  
267  
268 Vice Chair Dunn stated that closing the public hearing and consulting with town counsel and reopening the public  
269 hearing if needed makes sense.  
270  
271 Chairperson Stith asked if there was any more public comment.  
272  
273 Mr. Thrasher addressed the Board once again. Mr. Thrasher asked that the Board consider not allowing the lot line  
274 to move so that more manufacturing could potentially be put on that first parcel if more land were added to the  
275 parcel.  
276  
277 Mr. Fontaine addressed the Board once again to ask the Board to consider the intended use in the Gateway  
278 district.  
279  
280 The Board entered deliberative session.  
281  
282 **A motion was made by Mr. Brockmeier to suspend deliberations for this evening until August 8<sup>th</sup> contingent**  
283 **upon being able to meet with town counsel. Seconded by Mr. Stearns.**  
284  
285 **Vote 5-0.**  
286 **Motion passes.**  
287

288 The Board discussed the best way to amend the schedule regarding cases, minutes, and a potential alternate  
289 candidate.

290

291 **A motion was made by Vice Chair Dunn to adjourn at 9:55 pm. Seconded by Mr. Brockmeier. Vote 5-0.**

292 **Motion passes.**

293

294 Respectfully submitted by Anitra Lincicum