



ZONING BOARD OF APPEALS
TOWN OF MONTAGUE
1 AVENUE A
TURNERS FALLS, MA 01376

RECORD OF DECISION & VOTE

Date of Decision April 17, 2001

Case No. 01-05

Applicant

Turners Falls Hydro, LLC

Date of Filing May 1, 2001

Owner

Strathmore Paper Co. c/o International Paper Co.

Address 6400 Poplar Ave.

Memphis, TN 38197-0100

Premises Affected

Assessors Map 2 Lot 1

16 and 20 Canal Road, Turners Falls, MA

Variance Application (40A) **(X)**

Special Permit Application (40A) **(X)**

Public hearing held on:

Wednesday, March 28, 2001, continued to
Tuesday, April 17, 2001

Variance requested to Sections 5.4.4 and 5.4.5 (Minimum Side and Rear Yard Setback From Property Line) to reduce the required setbacks to 0 feet.

Special Permit pursuant to Section 6.2.1 (Parking and Loading Requirements) to reduce the required on-site parking and provide parking by easement.

The Applicant seeks to allow separation of the powerhouse (hydro electric generating facility) from the remaining property of Strathmore Paper Co., as shown on Approval Not Required (ANR) - Plan of Land in Montague, MA, Prepared For International Paper Company drawn by Douglas A. Stephens, Ainsworth Associates, dated 6/27/00 - endorsed by Planning Board 8/8/00.

*Reference: Proposed Methods for Managing the Common Area Risks and Liabilities,
with location of easements, page 28-32+*

Board of Appeals Findings:

History and Existing Conditions:

The Strathmore Paper Co. mill complex is a series of attached and merged structures consisting of about 300,000 square feet of floor area principally constructed over a period of 50 years during the late part of the 1800's and early 1900's. It is located between the Power Canal and the Connecticut River on a steeply sloping lot dominated by ledge. The elevation difference is approximately 45 feet over a distance of 200 feet.

The powerhouse was built around 1918 between three preexisting sections of the building. The powerhouse uses the other building walls for floor and roof support and over years it became fully integrated with the overall mill structure and function. The hydro generated

power directly for the paper mill from inception to until about 1952. From then until the closing of the paper mill in 1994 it supplemented the outside power usage of the mill by transfer of water rights and electric generation during peak water flow. It currently generates wholesale electricity.

In 1994 the Strathmore Paper mill shut down and the paper machinery was sold. The hydro facility continued to function while the remainder of the paper mill on Lot B was intermittently used for light industrial, office and other small business uses. In September of 2000 the last tenant remaining in the mill was evicted. The complex has been unoccupied since that time.

Public and Fire Safety:

The mill complex is on an island between the Power Canal and the Connecticut River, with limited access for public safety vehicles. Fire fighting at this building is difficult and dangerous at best. The continued function of the sprinkler system and alarms in this building complex is essential. Maintenance of fire safety systems and security in old mill buildings is critical.

Access to the Powerhouse

This issue of access was not directly before the Board of Appeals. The Planning Board did consider the adequacy of the access during the ANR plan review. They determined that there was historical access to the mill and powerhouse over Canal Road sufficient to consider this private way “adequate” access to the proposed powerhouse lot. The Planning Board based its decision on the fact that there would be no change of use or intensity of use at the hydro facility. Also noted at that time was that the access tunnel easement route under the abutting Esleeck Paper Mill is active and primarily used for loading at the lower level and other industrial functions.

Building Systems:

Essential functions of the hydro facility including the tailrace, oil storage room, transformers, battery storage area and the rear wall are proposed to remain on Lot B while the mill complex electrical service and switchgear equipment and wiring will remain in the powerhouse on Lot A.

The mill building complex and the powerhouse share many if not all of the critical building systems, including structural support, fire suppression and alarms, utilities and service connections. These shared systems include but may not be limited to the following:

- Common areas – The access road next to the Canal, parking and loading areas, access easement tunnels under the Esleeck building, through courtyards and Strathmore buildings 10 & 4, boiler room, sewer ejector and controls, internal exits and egress, windows, doors, pipe chases, drain lines and other constructed openings.
- Structural Elements - Common walls provide structural support of the powerhouse floors and roof. Strathmore buildings 2, 4, 5 and 5A provide vertical and lateral support.
- Shared systems – Fire suppression, fire signaling and alarms, emergency lighting, electrical service drop, domestic water, sanitary plumbing, heat.

Use:

The Applicant proposes no change of use to the Powerhouse as a hydro electric generating facility on the proposed lot A. The Owner, International Paper Co., proposes the sale of the mill. No plan for the use or re-use of lot B was proposed, although a significant change of use is anticipated.

THE BOARD OF APPEALS CONCLUDES:

Geographic Conditions and Hardship:

Due to the size of the building and its location, the Strathmore Mill is a unique structure on a unique parcel of land. The size and complexity of the building complex creates difficulty in identifying and developing a reuse of the entire property that could support the substantial burdens of the upkeep of such a structure. The board concludes that a portion of the hardship in finding an able and appropriate successor in use of the building is result a lack of re-use planning and an IPC policy of restriction of reuse of an otherwise specialized building. The board finds insufficient evidence to conclude that the failure to find a re-use tenant is a hardship that is not within the ability of the Owner to resolve.

Literal Enforcement Hardship:

The Applicant and Board have identified many interconnected building and site features that are impractical, impossible or costly to be separated. As a consequence the practical effect of separation of Building Systems is a significant financial burden. The Applicant has proposed that the interconnectedness be resolved by an exhaustive series of cross easements. The proposed resolution through cross easements is striking in its resemblance to condominium arrangements (MGL Chapter 183A) designed specifically for this purpose.

It is clear to the board that the Applicant and Owner might achieve literal setback compliance by the creative placement of a lot line and the demolition of thirty feet of existing building and the total separation of services and functions. The option of literal compliance, however improbable impractical or undesirable, is not the only one available under law. The board concludes that literal compliance is not a hardship that is without an available solution.

The board finds that the need and desire for generation of onsite power for industrial purposes has diminished and almost disappeared in the century that this facility has existed. The two uses are no longer inherently compatible functions. In fact the expertise required for each function has diverged and may be unavailable in single owner, operator or entity on or in a unified location. The board finds grounds to conclude that this element is a sufficient and unique hardship to warrant variance. (see vote and Mr. Booska's dissent below)

Public Detriment:

It is difficult for the board to definitively evaluate the consequences of granting or denying relief. The public benefit in a productive reuse of the building is clear in the testimony of the hearing. Furthermore it is clear that the proposed separation of the hydro function is a productive reuse of the powerhouse section that may catalyze the effort to find a productive use of the remainder of the complex by virtue of an active presence.

Mr. Booska's dissenting opinion: The stated lack of a plan or reuse strategy for the remainder of the complex by the Owner (IPC) was a focused concern of the board. The removal of the potentially most productive part of the facility and leaving the remainder with no reuse plan except for "it's for sale" raises the specter of a purposeful abandonment of responsibilities. To allow this condition to be aggravated by separation of the building assists into "lots" cannot be reconciled with the intent of the zoning by-laws nor deemed to be in the public good.

Setbacks:

Zoning setback requirements, although dimensional, are in place to promote general health, safety and welfare. They are required to ensure a separation of uses, provide barriers and buffers for different owners and incompatible uses. They further provide for fire safety and assist in designating and maintaining appropriate boundaries, with burdens distributed in an equitable fashion. All these functions are relevant and apply here.

The request here is not simply for dimensional relief but instead goes to the heart of the intent of setback requirements at all. The separation proposed is not zero, rather, it is instead a request to integrate and merge a boundary. In this case, a higher standard of care is required to meet the intent of setbacks in the zoning by-laws.

THE BOARD OF APPEALS VOTED:

To grant a variance, with conditions, to Sections 5.4.4 and 5.4.5 (Minimum side and rear yard setback from property line) to allow for the creation of property lines with no lot line setbacks that run through the Strathmore Mill Complex creating two lots by allowing separation of the powerhouse with the hydroelectric facility from the mill.

To grant a Special Permit determination pursuant to Section 6.2.1 (Parking and Loading Requirements) to reduce required on site parking and to provide required parking by easement on the remaining land of Strathmore Paper Co.

Conditions of approval:

The Applicant and Owner must provide for the general public purpose of health, safety and welfare and the specific purpose of zoning setbacks by the following means.

1. Purpose: The Applicant and Owner, in all matters relating to this approval, shall preserve the essential functions of the complex as a whole. The efficient and effective use and reuse of the building complex and facilities are essential goals and preconditions of this approval. Essential functions of the powerhouse and the essential functions of the mill complex shall be guaranteed by the both parties and their successors. This requirement shall take precedence

over any other specific requirement or agreement or obligation the parties shall enter into now and in the future as it relates to this approval.

2. Easements: The Owner and Applicant shall develop binding agreements (hereinafter “Binding Agreements”) that shall run with the land to satisfy the following requirements:

Access, Parking and Loading:

- The rights of access that were the basis of the Planning Board’s ANR approval of Lot A shall be preserved.
- Access and easements to tunnels under the Esleeck building, through courtyards and under Strathmore buildings 4 & 10 to the lower level of the powerhouse shall be retained.
- On-site parking will not be required on Lot A but will be provided by easement adjacent to the powerhouse rack house on remaining land of Strathmore. The parking easement area shall also be available as a non-exclusive loading area.

Common Utilities, Shared:

- The Owner and Applicant shall identify and inventory all shared utilities and provide for the relevant rights to use and the appropriate access to maintain all needed functions.
- The shared utilities include but may not be limited to: domestic and fire suppression water supply, sanitary plumbing and sewer, heat and electricity and the supporting piping, wiring and equipment which includes but may not be limited to sprinkler service connection(s) and controls, electrical switch gear, emergency generator, boilers, sewer ejector, drain lines, pipe chases and other constructed openings.

Fire and Safety Systems:

- Binding Agreements shall assure the adequate and continued provision of fire suppression in the entire complex and provide for the continued operation and maintenance of the fire signaling and alarm system.
- Fire Protection Plan: Applicant and/or Owner shall have a Fire Protection Engineer review current fire suppression and alarm systems and submit a plan to the Turners Falls Fire Department that either segregates the systems or integrates the systems with appropriate functions, Fire Department access protocols, security measures and easements.

Emergency Ingress/Egress:

- Egress and internal exits required by the building code and fire codes shall be preserved and the fire separation and security needs resolved. Specifically, the route of egress listed below shall be maintained and kept available:
 - Side to parking easement level 3
 - Rear level 3 to Building 2 level 4 if needed.
 - Boiler room and basement level 1 to building 4 tunnel to courtyard.
 - Basement Oil Storage room to Building 2 level 1
- A specific plan or agreement shall be developed to operate the emergency lighting and emergency generator system.

Structural Support and Fire Separation Elements:

The common walls provide structural support of the powerhouse floors and roof and the required fire separation. Strathmore buildings 2, 4, 5 and 5A provide vertical and lateral support to the powerhouse (Building 20).

- The Applicant and Owner shall resolve the maintenance of the common walls, structural supports and fire separation elements.
 - The Applicant and Owner must resolve the consequences of loss, demolition and/or structural enhancement desired or required by a change or intensification of use.
3. Maintenance: Applicant and Owner shall ensure that maintenance of common, exclusive and non-exclusive areas is expressly allowed and such ability may not be hindered by either owner or their successors. Access to the others property is required. A method of how access may be gained and under what conditions and protocols shall be developed. Rights to maintain easements and other necessary functions of the building(s) and lots are necessary and may not be prohibited.
 4. Security: Applicant and Owner shall provide for fire safety by keeping secure the areas under their control to prevent authorized access and shall further agree to extend that security consideration to any easement area not under their direct control.
 5. Review of Easements: The required mutual easements proposal meant to assure accesses, availability of services and fire safety shall be reviewed by the Board prior to recording to assure that the purpose of the Variance and Special Permit conditions are met. The guarantees shall run with the land. Approval shall not be unreasonably withheld.
 6. Amendment: Nothing in these conditions shall be interpreted as to prevent the separation and installation or independent provision of utility services and fire protection systems, provided that such services meet all relevant law and governing codes and local approvals. Any requested amendments to the easements or guarantees shall be submitted to the board pursuant to #9 Modification and Approval.
 7. Costs: An inventory of probable costs and a mechanism for allocating those costs shall be developed.
 8. Dispute resolution: A mechanism for resolution of disputes, including disputes involving costs, shall be developed.
 9. Modification and Approval: Any changes proposed to the Binding Agreements or these conditions shall be reviewed by the Board of Appeals or its designee. Changes proposed to easements or to other requirements of this approval shall be reviewed by the Inspector of Buildings and may be approved if in conformance with the Variance and Special Permit. Changes proposed to these conditions or to the Binding Agreements that are consistent with the purpose of this approval may be allowed by the Board without further hearings. Further hearings shall be at the discretion of the Board. Approval shall not be unreasonably withheld.
 10. Priority: The above conditions of approval shall take priority over any specific condition or particular application of the Binding Agreements. Wherever there may be a dispute or conflict with the intent of this approval, this approval shall govern. A specific reference to this Variance and Special Permit approval shall be made a part of the Binding Agreements.

RECORD OF VOTE OF VARIANCE

The vote of the Zoning Board of Appeals was as follows:

1. <u>Ernie Brown YES Chairman</u>	4. <u>Walter Sojka YES</u>
2. <u>Mark Bander YES</u>	5. <u>Dennis Booska NO</u>
3. <u>John Reynolds YES</u>	

RECORD OF VOTE OF SPECIAL PERMIT

The vote of the Zoning Board of Appeals was as follows:

1. <u>Ernie Brown YES Chairman</u>	4. <u>Walter Sojka YES</u>
2. <u>Mark Bander YES</u>	5. <u>Dennis Booska YES</u>
3. <u>John Reynolds YES</u>	

IMPORTANT: Any appeal from the decision of the Town of Montague Zoning Board of Appeals can be made only to the Court and must be made pursuant to Section 17, Chapter 40A (G.L.) as amended, and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

Board of Appeals

By _____
Ernest L. Brown, Chairman

Douglas S. McIntosh, Clerk