

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

SUPERIOR COURT DEPARTMENT
CASE NO.

JONATHAN BUONI, RICHARD ZONA, et al.

Plaintiff,

v.

JESSICA LANGENBACK, JASON
LANGENBACK, LANGENBACK PROPERTIES
LLC, AND BRO MX; and BRIAN MIKSIC, JESSE
LEE EAGAN POIRER, LISA BLACKMER,
ROBERT BURDICK, KYLE HANLON, KAYLA
HOLLINS, PAUL SENECA, and RYE
HOWARD, in their official capacities as
members of the CITY OF NORTH ADAMS
PLANNING BOARD,

Defendants.

COMPLAINT

INTRODUCTION

1. This is an appeal by Jonathan Buoni, et al., pursuant to G.L. c. 40A, §17, from a decision of the City of North Adams Planning Board (the "Planning Board"), that was filed with the North Adams City Clerk on March 24, 2023 ("SPA2023-03" or the "Decision"). The Decision granted defendants Jessica and Jason Langenback, Langenback Properties LLC, and BRO MX (the "Defendants") an amendment to a special permit (SPA2015-11) to allow for expanded hours and days of operation at the motocross track located at 1190 South State Street, North Adams, Massachusetts. Mr. Buoni et al. are aggrieved persons within the meaning of G.L. c. 40A, §17. Plaintiffs contend the Decision is arbitrary, capricious, and is based on untenable legal grounds, and exceeds the authority of the Planning Board.

JURISDICTION

2. This Court has jurisdiction over this matter pursuant to G.L. c. 40A, §17.

PARTIES

3. Plaintiff Jonathan Buoni is a North Adams resident with a mailing address of 765 Church Street, North Adams, MA 01247.

4. Plaintiff Richard Zona is a North Adams resident with a mailing address of 17 D Street, North Adams, MA 01247.

5. Defendant Langenback Properties LLC and BRO MX LLC are Massachusetts limited liability companies with a mailing address of 375 Henderson Road, Clarksburg, MA 01247.

6. Defendant Jessica and Jason Langenback are the owners of the aforementioned companies with a mailing address of 375 Henderson Road, Clarksburg, MA 01247.

7. Defendant Planning Board is a duly organized municipal board of the City of North Adams.

8. Defendant members of the Planning Board are named only in their official capacities as members of the Planning Board, and as required pursuant to G.L. c. 40A, §17, they are listed below together with their respective addresses:

- (a) Brian Miksic, 123 Church Street, North Adams, MA 01247;
- (b) Jesse Lee Eagan Poirer, 45 Williams Street, North Adams, MA 01247;
- (c) Lisa Blackmer, 74 Cleveland Avenue, North Adams, MA 01247;
- (d) Robert Burdick, 67 Cherry Street, North Adams, MA 01247
- (e) Kyle Hanlon, 264 Beaver Street, North Adams, MA 01247
- (f) Kayla Hollins, 96 Veazie Street, North Adams, MA 01247
- (g) Paul Senecal, 165 East Avenue, North Adams, MA 01247; and
- (h) Rye Howard, 23 Goodrich Street, North Adams, MA 01247.

- (i) Dean Bullett, 358 Union Street, North Adams, MA 01247.

FACTS

9. The Property is located at 1190 South State Street, North Adams, MA 01247.
10. The Property has been developed into a motocross track.
11. The Property is located on approximately 28 acres on the east side of Curran Highway, Zoned Industrial, I-1, and is within a 100-year flood plain.
12. The plaintiff is not an abutter but is entitled to use his property and the nearby walking trails and lake without being constantly disturbed by the sound emanating from Defendants' property.
13. In 2015, the Planning Board granted a special permit (SPA2015-11) to David Bond and Karen M. Bond, the former owners of the Property, that allowed them to operate a motocross track on Tuesdays, Thursdays, and weekends from 10:00 AM to 6:00 PM. A copy of the Planning Board's decision in SPA2015-11 is attached as Exhibit A.
14. The Defendants filed an application for an amendment to SPA2015-11 with the Planning Board on or about February 15, 2023. In SPA2023-03, Defendants sought permission to select any two days of the week to operate the track, rather than being limited to Tuesdays and Thursdays. In addition, they sought permission to expand the track's operating hours, requesting two additional evening hours on weekdays. A copy of the Planning Board's decision in SPA2023-03 is attached as Exhibit B.
15. In SPA2023-03, the Defendants sought to amend the special permit that was issued to the previous owners of the Property and is not in their names.
16. The Application was incomplete as questions 9 – 13 were left blank. A copy of Defendants' Special Permit Application is attached hereto as Exhibit D.
17. On March 13, 2023, the Planning Board conducted a public meeting on the special

permit application in the City Council Chambers in City Hall.

18. Upon information and belief, on March 13, 2023, the Planning Board voted 5-1, to grant a special permit to amend the permit and extend the hours without specifying how noise levels at the motocross track would be monitored in accordance with city and state noise ordinances.

19. The Planning Board's Decision was filed with the City Clerk on March 24, 2023. A true and accurate copy of the Decision is attached hereto as Exhibit B.

20. Pursuant to Section 12 of the City's Zoning Ordinance, a special permit is required for change of use in accordance with Sections 12 and 12.3.

21. Pursuant to Section 12.3.4 of the City's Zoning Ordinance, the Planning Board has the limited authority to grant special permits as follows:

Before granting a special permit for any use requiring such permit under the provisions of this ordinance, the special permit granting authority shall find that the proposed use:

- (1) Will be in harmony with the general intent and purpose of this ordinance; and
- (2) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
- (3) Will not have vehicular and pedestrian traffic of a type and quantity so as to cause significant adverse effect to the neighborhood;
- (4) Will not have a number of residents, employees, customers or visitors so as to cause significant adverse effect to the neighborhood;
- (5) Will not be dangerous to the immediate neighborhood or the premises through fire, explosion, emission of wastes or other causes;
- (6) Will not create such noise, vibration, dust, heat, smoke, fumes, odor, glare, adverse visual effects or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;
- (7) Will not cause degradation of the environment; and
- (8) Will not impose an excessive financial burden to the City.

22. The Planning Board's Decision in SPA2023-03 does not contain the findings required for a special permit under Section 12.3.4 of the Zoning Bylaw.

23. The Planning Board's Decision in SPA2023-03 does not contain any specific, factual findings regarding noise mitigation required for the issuance of a special permit.

24. The Planning Board's finding that the proposed use "will protect adjoining premises and the general neighborhood from any detrimental impact resulting from the use of the subject property including, but not limited to, creation of a nuisance by virtue of noise, odor, unsightliness, signs or vibration" is vague, arbitrary, and capricious. This is a mere recitation of required findings and does not include any specific, factual findings.

25. In granting a special permit for a motocross track without any noise mitigation, the Planning Board did not consider or address the Special Permit review criteria of Section 12.3.4 applicable to businesses of this nature.

26. The Planning Board did not consider any mitigation measures as required by Section 12.3.5 of the North Adams City Zoning Ordinance.

27. The Planning Board's improper grant of a special permit undermines the intent of the Ordinance and unlawfully deprives the Planning Board of its ability to impose the specific requirements of the Ordinance for a motocross track, which violates city and state noise ordinances on a regular and ongoing basis.

28. The Planning Board's decision is arbitrary, capricious, based on untenable legal grounds, and exceeds the authority of the Planning Board.

COUNT 1
(Appeal Pursuant to G.L. c. 40A, §17)

29. Paragraphs 1 through 28 are hereby repeated and incorporated by reference as if fully set forth herein.

30. Pursuant to G.L. c. 40A, §17 and the North Adams City Zoning Ordinance, Section 12.3.4, the Planning Board's Decision granting the Defendants' Application for a special permit is arbitrary, capricious, based on untenable legal grounds and exceeds the authority of the Planning Board.

31. The Defendants made no showing, and the Planning Board did not find, that the motocross track would not result in substantial noise that could be mitigated year-round.

32. The Defendants made no showing, and the Planning Board did not find, that the motocross track would not result in substantial noise that would be detrimental to and have a significant adverse effect on the neighborhood.

33. The Planning Board's granting of a special permit without the required findings unlawfully circumvented the Special Permit requirements for industrial properties under the City's Zoning Ordinance.

34. The Planning Board's grant of a special permit undermines the clear intent of the Ordinance, which is for the Planning Board to apply a Special Permit review process to Defendants' application.

35. Defendants lack a valid permit in their names, making it impossible to request an amendment of those conditions. The original permit was issued to David Bond on April 13, 2015. However, David Bond is no longer associated with the defendant's business, BRO MX, and sold the land in 2021.

36. In an opinion letter provided by the City Solicitor, John DeRosa, on May 10, 2011, in response to an inquiry made by Marie Harpin, City Councilor, on March 15, 2011, Attorney DeRosa confirmed that "a change in the occupancy/tenant of a commercial, business, or industrial property or structure triggers site plan approval." Attorney DeRosa refers to Section 3D of the Zoning Ordinance, which has since been reorganized. The definition to which he refers and was formerly listed under Section 3D can now be found in Chapter Z, Zoning, Section 13, "Change of Use." Attorney DeRosa's opinion letter is attached as Exhibit C.

37. BRO MX has therefore been operating without a valid permit and cannot attempt to amend the Special Permit, SPA2015-11, granted to David Bond.

38. Additionally, BRO MX changed its operating hours (ahead of schedule) to what was

granted under the proposed amendment, even though the 20-day appeal period had not transpired. Practice sessions have already included Wednesday March 24th and Friday 29th from 1pm to 7 pm, thereby using both new days and times.

39. Multiple noise complaints and requests to enforce the city noise and zoning ordinances were made to the North Adams Building Inspector and Zoning Enforcement Officer under Section 12.2.2 of the City Zoning Ordinance and Section 13.2.2 of the Massachusetts Zoning Manual, but no action was taken and no notification under the required time was given.

40. The Planning Board's decision in SPA2023-03 is therefore arbitrary, capricious, based on untenable legal grounds, and must be annulled pursuant to G.L. c. 40A, §17.

RELIEF

WHEREFORE, Plaintiffs request this Honorable Court:

- (1) Annul the Planning Board's decision to grant the Defendants' application for a special permit; and
- (2) Grant such other relief as this Court deems equitable and proper.

JONATHAN BUONI, RICHARD ZONA, et al.,

By and through their attorney,



C. Stephen Dew (BBO# 568161)
Law Office of C. Stephen Dew
70 Harrison Avenue
Williamstown, MA 01267
(415) 407-3664
stevedew77@gmail.com

Date: April 13, 2023

EXHIBIT A

DEROSA DOHONEY LLP

ATTORNEYS AT LAW

John B. DeRosa
Richard M. Dohoney
Thomas Manuel *
Pamela R. Green
Neil C. Darragh
Farrah S. Wax **

Morton Freedman
Retired

* Also admitted VT
** Also admitted NY

May 10, 2011

Marie Harpin
City Councilor
City Hall
Main Street
North Adams, MA 01247

Dear Councilor Harpin:

We have reviewed your letter dated March 15, 2011 requesting that we furnish our legal opinion relative to the application of certain provisions of the North Adams Zoning Ordinance; in particular the sections pertaining to site plan review upon a "change of use" and the necessity of procuring a special permit. A copy of the letter is attached to this opinion as Exhibit A.

We summarize the facts contained in your letter and the context in which the issue is presented for opinion as follows:

You serve as an elected member of the North Adams City Council and also serve, at the pleasure of the City Council President, as liaison to the North Adams Planning Board. To cut to the chase, you suggest in your letter that the planning board no longer uniformly applies the "change of use", "site plan review", and "special permit" provisions contained in Section 3D of the Zoning Ordinance; namely that the requirements for site plan review and the need for a special permit, triggered particularly by change in "the occupancy/tenancy of a commercial, business or industrial property," are applied one way for businesses in the so-called downtown business district, and another way for businesses outside the so-called downtown business district. You also suggest that it is the policy of the current administration to purposefully ignore these provisions of the Zoning Ordinance to accommodate "a campaign promise".

BUILDING 1, SUITE 200, MASS MOCA
87 MARSHALL STREET, P. O. BOX 746, NORTH ADAMS, MASSACHUSETTS 01247-0746
TELEPHONE (413) 664-1073 TELEFAX (413) 664-7379

BEACON OFFICE COMPLEX, 55 NORTH STREET, SUITE 304, PITTSFIELD, MASSACHUSETTS 01201
TELEPHONE (413) 418-0998 TELEFAX (413) 664-7379

Section 2-37 of the revised Ordinances for the City of North Adams requires that the "city solicitor shall, whenever so required by the mayor, the city council or any officer of the city government who may need the same in the discharge of official duty, furnish them or any of them with his legal opinion, upon any subject touching the duties of their respective offices." In the instance matter, we have not received a request for a legal opinion from either the Mayor or the Planning Board relative to the implementation and/or applicability of the pertinent sections of the Zoning Ordinance that you refer to. Nor have we received a request from the City Council to opine on these matters for the purpose of considering modifications to the Zoning ordinance.

We do not as a matter of practice, and in accordance with our obligation under section 2-37, answer requests from individual city counselors except in circumstances where it is clear that the "subject (matter touches upon) the duties of their respective offices". We do not read your letter as meeting these criteria for our review. However, putting aside the political context of your letter, and separate and apart therefrom, a clear understanding of Section 3D and its applicability upon a change in "the occupancy/tenancy of a commercial, business or industrial property" is necessary to the discharge of official duty for the Mayor and the Planning Board as well as for the City Council in the event it chooses to consider modifications to the current Zoning Ordinance. We therefore elect to opine as to the matters contained in your letter, and to provide guidance to the Mayor and the Planning Board in applying the Zoning Ordinance.

You presumably request our legal opinion relative to the validity of that portion of the definition of "Change of Use" in Section 1 of the Zoning Ordinance that reads as follows:

"A change of use shall also include for the purposes of site plan approval pursuant to Section 3D, a change in the occupancy/tenant of a commercial, business, or industrial property or structure, provided that any review by the Planning Board pursuant to this paragraph shall be limited to the criteria set forth in Section 3D.9, paragraphs (b)(f)(h) and (i)".

You also presumably request our opinion regarding whether upon the happening of the circumstances described in this definitional section of the Zoning Ordinance, the new occupant/tenant must comply with the provisions of Section 3D.2, and the sections that follow pertaining to obtaining a special permit.

To answer these two questions and to understand when and how to apply the provisions of section 3D and how they interact with the definitional provisions of Section 1 to control uses, it is necessary to understand basic land use terms and principles, as they are used in our Zoning Ordinance and as our courts have applied these terms and principles in our case law.

First, Section 3D is entitled "Site Plan Approval". Section 3D.1 requires the submission of a site plan upon the happening of certain events, among which are a

change of use as described above. Section 3D.2 requires that a special permit be first obtained in all circumstances that require the submission of a site plan. Under the ordinance, the Planning Board is the special permit granting authority. The requirement of a site plan and the issuance of a special permit are inexorably linked under Section 3D, and the provisions of Section 3D deal in a variety of ways with requirements and criteria that involve a site plan and procedures and requirements – some pertaining to the site plan and others not – that ultimately lead to the issuance of a special permit. Further, Section 3D.14.1 provides that the Planning Board may waive the requirements of Section 3D upon request and upon making certain findings.

Second, a special permit under statutory and case law allows a use or structure on a parcel of land that is not allowed as of right in the applicable zoning district. Preparation of and approval of a site plan is commonly the main prerequisite, after compliance with certain logistics and procedures, for the issuance of such a special permit, as is the case with Section 3D. On the other hand, site plan approval is allowed for uses that are otherwise permitted as of right, where the ordinance sets forth proper standards and provides for regulation by imposing reasonable terms and conditions on allowed uses rather than authorizing their outright prohibition. If a use is permitted as of right, the requirement of a special permit – as opposed to such site plan approval – cannot be required. At best, there is a complex relationship between special permits and site plan review, and variations of this relationship throughout our state jurisdictions. This complexity is bountifully evident in our Zoning ordinance.

Third, the case of *SCIT, Inc v. Planning Board of Braintree*, 19 Mass.App.Ct. 101, 472 N.E.2nd 597 (1991) is the seminal case interpreting the authority of a municipality to control uses through special permits. It stands for the proposition that a use allowed as of right cannot be made subject to the granting of a special permit. On the other hand, this case does not invalidate a provision requiring site plan approval for all uses in a district as long as site plan approval is limited to imposing reasonable terms and conditions on otherwise permitted uses. In fact, the earlier case of *Y.D. Dugout v. Board of Appeals of Canton* 357 Mass. 25, 255 N.E.2nd 732 (1970) had done just that, authorizing the imposition of reasonable conditions through site plan approval of all commercial uses but not outright denial of the use as would be possible with a special permit requirement.

Fourth, although the Zoning Act does not specifically address the issue, it is however clear that it is appropriate for an ordinance (or even the rules of the Planning Board as the permit granting authority) to require review and approval of a site plan for uses that are otherwise permitted as of right, where the ordinance provision sets forth proper standards and provides for regulation by imposing reasonable terms and conditions on allowed uses rather than authorizing an outright prohibition. In fact, contrary to what the language of Section 3D might import, the current trend is toward considering site plan approval as being different and distinct from a special permit, and we believe even in the circumstance of our Section 3D where site plan approval is the first and prerequisite step to obtaining a special permit. We agree that this trend gives rise to uncertainties about procedural requirements, but in the absence of legislative

clarification - and there has been none, any procedural requirements shall be left to the municipalities and their permit granting authorities.

Fifth, "Change of Use" in that portion of Section 1 pertinent to the instant matter is defined as "a change in the occupancy/tenant of a commercial, business, or industrial property or structure", but by its own terms is limited in application [only] "for the purposes of site plan approval", and limits further the criteria of review to only four paragraphs in Section 3D.9. While inclusion of this definition in Section 3D.1 is problematic, its inclusion therein as part of the overall special permit scheme does not necessarily vitiate its validity as a different and distinct provision requiring, under the circumstances of the definition, site plan approval only for uses permitted as of right, subject to the imposition of reasonable terms and conditions (application of the four criteria under Section 3D.9). We think that the amendment to the definition of "Change of Use" and its inclusion in Section 3D.1 unwittingly entangle it in the complexities of the special permit process. However, where a statutory provision is susceptible of a valid interpretation and the legislative intent is clear, we will not invalidate our own laws.

Accordingly we respond to your questions as follows:

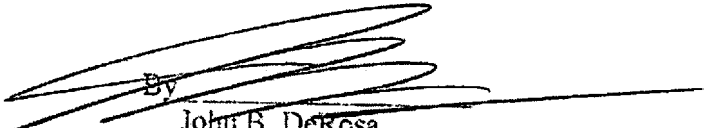
1. We find that the amendment to the definition of "Change of Use" in Section 1 of the Zoning Ordinance that includes "a change in the occupancy/tenant of a commercial, business, or industrial property or structure," triggers site plan approval, provided that any review by the Planning Board triggered by this definition, shall be limited to the criteria set forth in Section 3D.9, paragraphs (b)(f)(h) and (i), and that based upon such review, the Planning Board may impose reasonable terms and conditions.

2. We further find that, except as required in (1) above and except as otherwise and separately required, a new occupancy/tenant of a commercial, business, or industrial property or structure, based upon that event alone, shall not be required to comply with the provisions of Section 3D.2, and the sections that follow pertaining to obtaining a special permit.

We shall be available to the Mayor, the Planning Board and the City Council to answer any further questions you may have concerning these matters.

Respectfully submitted,

DeRosa Dohoney LLP

By 

John B. DeRosa

cc: Mayor Richard Alcombright
Members, North Adams Planning Board
Members, North Adams City Council
Marilyn Gomeau, City Clerk

EXHIBIT A

Marie Harpin
North Adams City Council
15 Rock St.
North Adams, MA 01247

March 15, 2011

Mr. John De Rosa, Esq.
North Adams City Solicitor
Mass Moca
North Adams, MA 01247
From: Marie Harpin

RE: Opinion on Zoning Ordinance "Change in Use" and "Site Plan Review"

Dear Attorney De Rosa,

It has been my privilege to serve as the City Council liaison to the North Adams Planning Board for the past 10 years. Over the past few months I have been quite concerned with the actions of the Planning Board. During this time I observed that some petitioners have been required to follow the Site Plan Review process in accordance with ordinance while others have not. Those businesses that were moving into the so-called downtown business district were not required to follow the Site Plan Review as described in the City's ordinances. These new businesses have opened without any review by the Planning Board which must issue a Special Permit listing all conditions associated with their operation including hours of operation. One such business was a restaurant that opened in a location which formally was a tanning salon/gift shop. This particular case is a clear change of use as set forth in the Zoning Ordinance Definition of "Change of Use", yet this didn't even trigger a site plan review. Yet another restaurant, which is not in the downtown area and replaced another restaurant, was required to go through a site plan review. The new policy of this administration is that if a business wants to open in the downtown area they are only required to send the Mayor and the Planning Board a letter of intent and no Special Permit is required. The Board has been advised by the Mayor through his Administrative Officer that only a courtesy letter is required to be sent to the Planning Board for any business opening up in this so called "downtown business zone" as it falls under "right by usage." Based upon this policy the Planning Board appears to have no real authority as to the regulation of Zoning Ordinance Sec. 3D, Site Plan Approval, Sec 3D.9, paragraphs (b),(f),(h) and (I). In accordance with this policy the Building Inspector determines which business will come before the Board, for Site Plan Review.

I brought up this question of policy at the March 8th Council meeting and asked the Mayor how these businesses were able to open without going through the Site Plan Review. His response was that it was "right by usage" and therefore did not constitute a "change in use", thus it would not trigger the "site plan review process." My question to you as City Solicitor: did you give the Mayor this opinion about "right of usage" and if you did, how can the Mayor, Administrative Officer and Planning Board ignore a city law which is in the City's Ordinances?

EXHIBIT B

Decision of the North Adams Planning Board on Case No: SPA2015-11

Special Permit – April 13, 2015
Site Plan Approval/change of use

Applicant:	David Bond
Business Name:	The Range/Motor Cross Track
Project Address:	1190 South State Street
Owner of Property:	DAVID A. BOND and KAREN M. BOND
Date of Meeting:	April 13, 2015
Date of Decision:	April 13, 2015
Date of Filing:	April 30, 2015
Special Permit:	GRANTED
Book/Page	Bk1294/Pg582

Public Hearing:

The North Adams Planning Board, acting under Section 3D, and Section 16 of the Zoning Ordinance, City of North Adams and Mass General Laws Chapter 40A, having received an application from David Bond, for property located at 1190 South State Street. Site Plan Approval special permit required pursuant to Section 3D for a change of use. A public hearing was held on Monday, April 13, 2015 at 6:00 PM in City Council Chambers in City Hall.

Notice of the hearing, list of abutters and a copy of the legal notice are available in the Office of Community Development. A copy of the public hearing minutes and a copy of the minutes at which the Planning Board vote was taken are attached hereto:

Findings:

After review under Section 3D and Section 16, the North Adams Planning Board finds that the proposed project, subject to the conditions set forth below:

1. will protect adjoining premises and the general neighborhood from any detrimental impact resulting from the use of the subject property including, but not limited to, creation of a nuisance by virtue of noise, odor, unsightliness, signs or vibration.
2. is adequate as to the arrangement of proposed buildings, structures, signs, screening and landscaping.
3. provides convenience and safety vehicular and pedestrian movement within the site and in relation to adjacent streets, properties and improvements.
4. is adequate in terms of the methods of disposal for sewage, refuse and other wastes and of the methods of drainage of surface water.
5. provides for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the subject property.
6. is adequate in terms of the arrangement and number of off-street parking spaces in relation to proposed uses.
7. protects wetland and wildlife habitat.
8. protects significant historic, scenic and environmental features of the city.
9. consists of a building design, site layout and landscaping which will be in a manner which compliments the attractiveness of the City and the surrounding environment.

Decision:

The North Adams Planning Board, acting as the Special Permit Granting Authority under the Zoning Ordinance, City of North Adams, GRANTS the special permit for the change of use subject to the following conditions:

1. This special permit goes with the applicant, David Bond, for property located at 1190 South State Street.
2. This special permit is for a change of use to convert the golf driving range to motor cross track as described in the narrative submitted with the application. Any other commercial use of the space shall require additional review by the Planning Board.
3. There shall be no new signage. Any changes to existing signage or additional signage shall require review and approval by the Planning Board.
4. The hours of operation shall be 10:00am to 6:00pm, Tuesday, Thursday, Saturday and Sunday. Any additional hours of operation shall require review and approval of the Planning Board.
5. Three secure portable rest room units will be present on site. One for men, one for women and one unit shall be a unisex, handicap accessible rest room. These units

shall be cleaned regularly on a weekly basis. The units shall be removed at the end of the season.

6. To assure there are no noise issues at the Southview Cemetery the applicant shall coordinate with local funeral directors as to the schedule and times of funerals at the cemetery. At no time will motor cross vehicles be allowed on the track during funeral quiet times at the cemetery.
7. Appropriate and adequate liability insurance for the motor cross track shall be obtained and a copy shall be provided to the Planning Board prior opening the track.
8. There shall be no additional lighting at the site.
9. All trash containers shall be secured and disposal of trash shall be the responsibility of the applicant. At no time will trash be allowed to blow around the area.
10. The City's recycling ordinance shall be adhered to where applicable.
11. The Office of Community Development will review the project in three (3) months after the opening and completion of the project to be sure the conditions are being complied with.
12. This permit must be filed at the Registry of Deeds (Registry of Deeds Document) within thirty (30) days after being certified by the City Clerk's Office.
13. This special permit shall lapse on April 13, 2017 if substantial use has not been started by that time.
14. If any provision of this permit is held invalid, the remainder of the conditions shall not be affected thereby, and all other portions of this decision shall nevertheless be in full force and effect.

In accordance with State law, before this special permit becomes effective, a copy of the Decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds by the applicant.

Reasons for Granting this Special Permit are as stated in the findings.

Case No: SPA2015-11

North Adams Planning Board
Special Permit/change of use

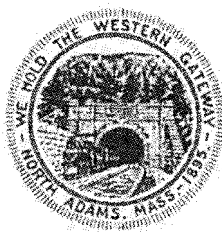
David Bond

For Property located at:
1190 South State Street
North Adams, MA 01247

North Adams Planning Board:
Approved on:

Date of Meeting: April 13, 2015

EXHIBIT C



CITY OF NORTH ADAMS, MASSACHUSETTS

Planning Board

Decision of the North Adams Planning Board on Case No: SPA2023-03

Special Permit – March 13, 2023

Site Plan Approval/Other: Amendment to original Permit SPA2015-11

Applicant: **Jessica & Jason Langenback**
Business Name: **Bro MX**
Project Address: **1190 South State Street**
Owner of Property: **Langenback Properties, LLC**
Deed Address: **1190 South State Street**
Date of Meeting (s): **March 13, 2023**
Date of Decision: **March 13, 2023**
Date of Filing: **March 24, 2023**
Special Permit: **Granted**
Book/Page: Book 1766 Page 475

Public Hearing:

The North Adams Planning Board, acting under Section 12.3, and Section 12 of the Zoning Ordinance, City of North Adams and Mass General Laws Chapter 40A, having received an application from Jessica & Jason Langenback for property located at 1190 South State Street. Special permit required pursuant to Section 12 for a Other: Amendment to original Permit to operate Motorcross. A public hearing was held on Monday, March 13, 2023 at 6:00 p.m. in City Council Chambers in City Hall.

Notice of the hearing, list of abutters and a copy of the legal notice are available in the Mayor's Office. A copy of the public hearing minutes and a copy of the minutes at which the Planning Board vote was taken are attached hereto.

Findings:

After review under Section 12.3 and Section 12, the North Adams Planning Board finds that the proposed project, subject to the conditions set forth below:

1. will protect adjoining premises and the general neighborhood from any detrimental impact resulting from the use of the subject property including, but not limited to, creation of a nuisance by virtue of noise, odor, unsightliness, signs or vibration.
2. is adequate as to the arrangement of proposed buildings, structures, signs, screening and landscaping.
3. provides convenience and safety vehicular and pedestrian movement within the site and in relation to adjacent streets, properties and improvements.
4. is adequate in terms of the methods of disposal for sewage, refuse and other wastes and of the methods of drainage of surface water.
5. provides for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the subject property.
6. is adequate in terms of the arrangement and number of off-street parking spaces in relation to proposed uses.
7. protects wetland and wildlife habitat.
8. protects significant historic, scenic and environmental features of the city.
9. consists of a building design, site layout and landscaping which will be in a manner which compliments the attractiveness of the City and the surrounding environment.

Decision:

The North Adams Planning Board, acting as the Special Permit Granting Authority under the Zoning Ordinance, City of North Adams, GRANTS the special permit for the change of use subject to the following conditions:

1. This special permit goes with the applicant Jessica & Jason Langenback for property located at 1190 South State Street.
2. This special permit is for a Other: Amendment to original Permit to operate Motorcross as described in the narrative submitted with the application. Any other commercial use of the space shall require review and approval of the Planning Board.
3. Hours of operation shall be .
4. Trash removal shall be the responsibility of the applicant.
5. Signage shall be as shown in the colored rendering submitted with the application. Any changes to signage shall require review and approval of the Planning Board.
6. Deliveries shall be standard mail deliveries during normal business hours.
7. The applicant shall adhere to the City's recycling ordinance.
8. This permit must be filed at the Registry of Deeds (Registry of Deeds Document) within thirty (30) days after being certified by the City Clerk's Office.
9. This special permit shall lapse on March 24, 2025 if substantial use has not been started by that time.

10. If any provision of this permit is held invalid, the remainder of the conditions shall not be affected thereby, and all other portions of this decision shall nevertheless be in full force and effect.

In accordance with State law, before this special permit becomes effective, a copy of the Decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds by the applicant.

Reasons for Granting this Special Permit are as stated in the findings.

Case No: SPA2023-03

North Adams Planning Board

Special Permit/Other: Amendment to original Permit SPA2015-11

Jessica & Jason Langenback

For property located at:

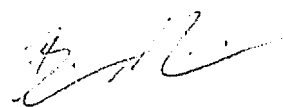
1190 South State Street

North Adams, MA 01247

North Adams Planning Board

Date of meeting: March 13, 2023

Approved:

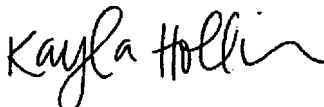


Brian Miksic, Chairperson



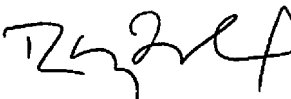
Kyle Hanlon

Lisa Blackmer



Kayla Hollins

Lynette Ritland Bond



Rye Howard

Robert Burdick



Paul Senecal

Jesse Egan-Poirier



CITY OF NORTH ADAMS, MASSACHUSETTS

Planning Board

March 24, 2023

Dear Applicant:

The decision of the Planning Board GRANTING your special permit is enclosed and has been filed with the City Clerk on **March 24, 2023**. The filing date commences the 20-day appeal period that will end on **April 13, 2023**. Additionally, after receiving your special permit you are required to register your business with the City Clerk's office. There is a \$35.00 fee payable to the City of North Adams to receive a certified copy of the Business Certificate.

After this date you must bring the original Notice of Decision (enclosed) to the City Clerk's Office in the North Adams City Hall (413-662-3000, ext. 3254) for certification that no appeals have been filed. There is a \$5.00 fee payable to the City of North Adams for this certification.

The Notice of Decision, certified by the City Clerk, must be filed with the Registry of Deeds, 65 Park Street, Adams, Massachusetts (413-743-0035) within 30 days from the expiration of the appeals period, in this case by **April 23, 2023**. There is a \$105.00 registration fee.

The Proof of Registry Filing document (enclosed) should be signed by the Registry personnel at the time your special permit is filed. This proof of filing will be required by the North Adams Inspection Services department prior to them issuing a building permit or a certificate of occupancy.

Please contact the North Adams Inspection Services department at 413-662-3000 ext. 3222 or the Mayor's Office at 413-662-3000 ext. 3216 should you have any questions.



CITY OF NORTH ADAMS, MASSACHUSETTS

Planning Board

North Adams Planning Board: Case No: SPA2023-03

Meeting Date: March 13, 2023

NOTICE OF DECISION (to be registered at the Registry of Deeds)

Notice is hereby given that a special permit for a Other: Amendment to original Permit SPA2015-11 has been granted in compliance with the statutory requirements of Massachusetts General Law, Chapter 40A as awarded to:

Bro MX Jessica & Jason Langenback,

By the North Adams Planning Board affecting the rights of the owner with respect to the use of the premises located at:

1190 South State Street, North Adams, MA 01247

The record standing in the name of:

Langenback Properties, LLC

By deed recorded in the Northern Berkshire Registry of Deeds in Book 1766/Page 475

The decision of said board is on file with all relevant documentation in the Mayor's Office and the Office of the City Clerk under case reference number: SPA2023-03

Signed this 13th day of March 2023

Brian Miksic, Chairman, North Adams Planning Board

Filing date: March 24, 2023

CERTIFICATION:

I _____, duly appointed, qualified and City Clerk of the City of North Adams, Massachusetts do hereby certify that the decision here above stated was filed in the Office of the City Clerk on _____ and that twenty (20) days have elapsed since the filing of said decision and that no appeal has been filed in its regard.

IN WITNESS WHEREOF, I hereunto set my hand and the seal of the City of North Adams, Massachusetts this _____ day of _____ in the year Two Thousand Twenty-Three.

City Clerk, Joshua P. Vallieres



CITY OF NORTH ADAMS, MASSACHUSETTS

Planning Board

PROOF OF REGISTRY FILING:

**Special Permit for Case No: SPA2023-03 was filed at the Northern Berkshire Registry of Deeds
on _____.**

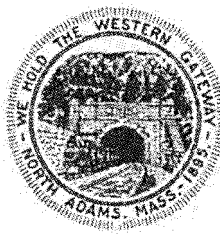
Applicant's name: Jessica & Jason Langenback

Address: 1190 South State Street, North Adams, Massachusetts 01247

Property owner: Langenback Properties, LLC

Project address: 1190 South State Street, North Adams, Massachusetts 01247

Signature of Registry Personnel



CITY OF NORTH ADAMS, MASSACHUSETTS

Planning Board

North Adams Planning Board – Case No: SPA2023-03

Meeting Date: March 13, 2023

DECISION NOTICE:

Decision of the North Adams Planning Board upon the petition of Jessica & Jason Langenback for property located at 1190 South State Street. Special permit required pursuant to Section 12.3 “Site Plan Approval” of the North Adams Zoning Ordinances for a Other: Amendment to original Permit in I-1 zone.

Property location:	1190 South State Street
Property owner:	Langenback Properties, LLC
Date of meeting:	March 13, 2023
Decision date:	March 13, 2023
Filing date:	March 24, 2023

After discussing the application as presented, the North Adams Planning Board made the following decision with regard to the property in question.

TO GRANT the request for a Other: Amendment to original Permit subject to Thirteen (13) conditions of a special permit.

Any person aggrieved by a decision of the North Adams Planning Board or by the failure of the Planning Board to take final action concerning any appeal, application or petition within the required time whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the superior court department in which the land concerned is situated, by bringing an action within twenty (20) days after the decision has been filed in the Office of the City Clerk.

This is to certify that a copy of the decision is on file with the North Adams City Clerk, the Inspection Services department and the Mayor’s Office.

Brian Miksic, Chairman
North Adams Planning Board

March 13, 2023
Date

EXHIBIT D



Received at the Office of the City Clerk

Date: _____

Time: _____

Received by: _____

Fee: _____

CITY OF NORTH ADAMS, MASSACHUSETTS

Planning Board

SPECIAL PERMIT APPLICATION

ALL REQUIRED INFORMATION MUST BE SUBMITTED BY THE APPLICATION DUE DATE OR
THE APPLICATION WILL NOT BE PROCESSED.

1. Name of applicant: Jessica and Jason Langenback
2. Name of property owner (if different): Langenback Properties, LLC
3. Name of legal counsel (if appropriate): _____
4. Address of project: 1190 South State Street
5. Zoning district(s) of project: I-1
6. Use classification of project (consult use schedule): Motorcross
7. The record title to project address stands in the name(s), address(es): _____
Langenback Properties, LLC, 1190 South State Street, North Adams, MA 01247

by a deed duly recorded in the Northern Berkshire Registry of Deeds in Book 01766 Page 475

**A COPY OF THE PROPERTY DEED MUST BE ATTACHED TO THIS APPLICATION FOR
THE APPLICATION TO BE PROCESSED.**

8. Type of special permit:

a. *Use permits:*

- ☐ Nursery schools/day care
- ☐ Theaters, taverns
- ☐ Shopping centers
- ☐ Industrial uses
- ☐ Solid waste facilities
- ☐ Research, experimental and testing laboratories
- ☒ Other: Amendment to original permit

b. *Site plan approval:*

- ☐ A change of use
- ☐ A change of land use
- ☐ New construction
- ☐ Addition to an existing use of a building or structure greater than 200 square feet
- ☒ Other: See Attached

9. If the site plan approval is required:

- ☐ Site plan materials are attached with application. See application checklist.
- ☒ Narrative is attached. See attached checklist for criteria to be explained within narrative.
- ☐ Please check here if the property in any district* will be creating or maintaining more than ten (10) new parking spaces. If yes, please provide detailed parking plan pursuant to Section 6 "Off Street Parking" in the North Adams Zoning Ordinance.
- ☐ Please check here if the proposed project will require additional signage. Please provide color elevation renderings of proposed signage. Please note if the dimensions, setback, duration, scale, or components of the signage will require a special permit by the Zoning Board of Appeals.
- ☐ Please check here if any part of the new construction will be sited within two hundred (200) feet of a river.** If yes, please provide a drainage plan for the site that ensures that safe runoff into catch basins, culverts, swales, etc.

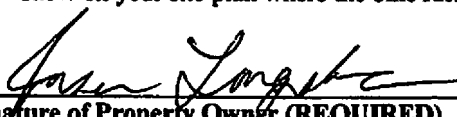
10. Determination of applicability from the Conservation Commission is:

- ☐ Attached
- ☐ In progress. Hearing is scheduled for: _____
- ☐ Not required. Please explain why: _____

11. Is a request for a Determination of Applicability from the Massachusetts Department of Environmental Protection necessary? _____ If yes, request was filed (date): _____

12. Are there other boards to which this proposed project would be providing information? If yes, please list board and date of hearing/meeting: _____

13. Would you be willing to add a bike rack to the exterior of your business? _____ If yes, please show on your site plan where the bike rack would be located.



Signature of Property Owner (REQUIRED)
Application will not be processed without it.



Signature of Applicant

2/15/2023

Date

Jason Langenback

Printed Name

(413) 662-9205

Phone Number

Address of Applicant

*Excluding CBD districts

**A river is defined as any natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year. For additional information, please consult the Office of Community Development for information on the "Rivers Protection Act", Chapter 258, MGL c.131 40.

Current Hours

Tuesday & Thursday 10:00-6:00

Saturday & Sunday 10:00-6:00

Proposed Change of Hours

Monday-Friday 10:00-8:00

Saturday & Sunday 9:00-7:00

##will only open 2 weekdays, Saturday and Sunday##

Days of operation will be logged on our website and social media platforms.

- Current hours do not allow working adults and children in school adequate practice time during the week. We would like to have the option to operate weekdays between 10am-8pm and weekends between 9am-7pm.
 - With that being said we would never open for that amount of time, we just want to be able to move our hours within the day to best accommodate our guests. (example: A Saturday's forecast is showing rain in the PM hours, we would open from 9:00am-3:00pm, or vice versa, also if there is any burials/services in the morning we would wait and open later in the day, we communicate regularly with all those involved at the cemetery for burials and services.) 8:00pm would be the latest we would stay open, in the spring and fall we would close 1/2 hour before dark for safety purposes.
- We would also like to propose the days of operation not be limited to only Tuesday and Thursday, we would like to be allowed to open any two weekdays. We agree to only open two days a week but depending on weather and schedules we would like to have the option to occasionally change days.
 - We would still have a set practice schedule, which will be Tuesday & Thursday 12:00-8:00, however if it's going to rain Tuesday and Thursday we would like to have the option of opening on a different day.
 - Also, we would like to have professionals come run safety and training clinics, on these select days we will not run a practice and the clinic will run from 10:00-6:00. We are basically asking for a rain date

and to accommodate occasional clinics, but we plan to maintain our current scheduled days for practice.

We would like to propose having only two portable restrooms on site.

- Both of which are unisex, one being handicap accessible. In the rare occurrence we are overly busy on a certain day/weekend we will contact our portable restroom service provider and schedule an additional cleaning. Having three has proven unnecessary at our facility.

Official Name Change on Special Permit

- Now that we have officially purchased the property we would like the name on the special permit changed to Jessica and Jason Langerback.

Hey Alexis, could we include this for the planning board to review. It's an analysis of the # of participant waivers for the month of July, showing the lack of weekday attendance due to weather and closing time. Thank you so much for all your help.

Total: 527

Signed Waivers

