

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

January 8, 2024

The Meeting of the Marlborough Planning Board was called to order at 7:00 pm in Memorial Hall, 3rd Floor City Hall, 140 Main Street, Marlborough, MA. Members present: Sean Fay, James Fortin, Patrick Hughes, Dillon LaForce, George LaVenture, and Chris Russ. Meeting support provided by City Engineer, Thomas DiPersio. Members Absent: Barbara Fenby.

Mr. Russ was voted Acting Clerk and opened the organizational meeting.

Mr. Russ opened the nominations for the Planning Board Clerk. Mr. Russ nominated Mr. George LaVenture, seconded by Mr. Fay. There were no additional nominations. On a motion by Mr. Russ, seconded by Mr. Fay the board voted to elect Mr. George LaVenture, as Clerk of the Marlborough Planning Board for the year 2024. Yea: Fay, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

Mr. Russ opened the nominations for the Planning Board Chairperson. Mr. LaVenture nominated Mr. Sean Fay, seconded by Mr. Russ. There were no additional nominations. On a motion by Mr. LaVenture, seconded by Mr. Russ, the board voted to elect Mr. Sean Fay as Chairperson of the Marlborough Planning Board for the year 2024. Yea: Fay, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

1. Draft Meeting Minutes

A. December 18, 2023

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the December 18, 2023, meeting minutes with minor corrections. Yea: Fay, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

2. Chair's Business

A. City Council's draft schedule

The Board reviewed the draft schedule.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to adopt the meeting schedule as drafted. Yea: Fay, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

3. Approval Not Required (None)

4. Public Hearings (None)

5. Subdivision Progress Reports (None)

6. Preliminary/Open Space/Limited Development Subdivision

A. Open Space Definitive Subdivision Application, Stow Road, Map and Parcels 8-164, 8-163, and 20-150A

Name of Applicant: Kendall Homes, Inc. (P.O. Box 766, Southborough, MA 01772)

Name of Owner: McCabe Family Irrevocable Trust & Judith McCabe
(6 Erie Drive, Hudson, MA 01749)

Name of Surveyor: Connorstone Engineering, Inc. (10 Southwest Cutoff, Northborough, MA 01532)

i. Flowchart

ii. Correspondence from Assistant City Solicitor, Jeremy McManus

Mr. LaVenture read the January 4, 2023, correspondence into the record.

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On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence. Yea: Fay, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

The Board discussed their ability to monitor the expiration date of the bond and Mr. Fay explained if/when developers request an extension, the Board will require proof that the bond is still in force and if a bond expires in theory the City is notified, but argued the Board is generally not notified.

Mr. Fay addressed concerns on the soil management for ANR lot 1 and ask if the developer is working with the Board of Health on this. Dan Burger (Connolly Burger, P.C.) said yes and explained the soil management for this lot is on the Board of Health's January 16, 2024, agenda. Mr. Fay asked Mr. Burger to update the Board after the Board of Health meeting and he agreed.

iii. Draft Certificate of Vote

iv. Draft Covenant

The Board reviewed the certificate of vote and covenant and discussed the following concerns:

- Which lot to retain under item 9 on the covenant;
- Add an additional waiver for the vegetated cul-de-sac on the plans, certificate of vote and covenant;
- Plan revision dates, November 10, 2023, and December 20, 2023*, need to be added to both the certificate of vote and the covenant;
- Add an additional condition (H) Planting Plan to the certificate of vote;

* An additional revision date once cul-de-sac wavier is included on plans.

Mr. Burger reviewed language from Mr. McManus's letter and discussed other forms of surety, he explained instead of having the covenant and retaining one of the lots, his client would prefer to put up a cash bond which would allow buyers to have more flexibility. He then questioned if this should be tabled until the next meeting so everyone could discuss the option of not doing the covenant.

Mr. Fay explained the Board has always had a covenant even if the process was to go immediately to a cash security. Mr. DiPersio explained the requirement for retaining a lot is separate from the construction bonds that secures the construction of the roadway. Separate from the typical bond, the retaining of the lot was put in the rules and regulations to enforce the developers completion of acceptance process.

Mr. LaVenture explained there are two separate guarantees: one under section G, for the performance and construction completion; and one under section L, for street acceptance. Both allow for either bond, cash bond, some combination or covenant. He explained traditionally the Board has worked under the covenant for the performance guarantee.

Mr. Fay argued the Board asks the City Engineer to set the amount for the bond once the covenant is in place. The covenant first, then the bond and the lot release. Mr. Burger asked, even though the rules allow for just the cash bond, it's the Board's practice to not do just the cash bond? Mr. Fay said yes, and explained the Board wants the covenant in place before the bond is put into place.

The Board reviewed the subdivision rules and regulations and Mr. LaVenture read a portion of section L.1.(a) Cash deposit or bond. – "The subdivider shall either file a proper bond or a deposit of money or negotiable securities in an amount determined by the Planning Board to be equal to the value of one buildable lot in the subdivision."

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The Board concluded the bond under section G, is the Board's general guarantee and the bond under section L, is for street acceptance.

Mr. Burger asked if the Board would agree to proceed under subsection A and explained he would be open to suggestions on how to establish the value of the lot and reminded the Board that it would be a cash bond and asked how to proceed procedurally under subsection A.

Mr. Fay explained the next step would be to get the certificate of vote and covenant in final form, request another extension on the vote and to pick up the discussion on the bonding options at the January 22, 2024, meeting. Mr. Burger agreed to keep in touch and to update the Board after the Board of Health meeting.

The Board discussed getting the Legal Departments procedural guidance on appraising the lot(s) value. Which would be used for the bond estimate. Mr. Fay argued the Board needs to be very specific on what the Board is asking and suggested the following:

- If the Board/City accepted cash instead of one of the lots being held as security, how does the Board value that lot under section L.1.(a).
- Ask the solicitor to review the changes provided by Mr. Burger addressing the following:
 - o Add an additional waiver for the vegetated cul-de-sac on the plans, certificate of vote and covenant;
 - o Add plan revision dates, November 10, 2023, and December 20, 2023, to the certificate of vote and the covenant *additional date may be required once cul-de-sac waiver has been incorporated;
 - o Add an additional condition (H) Planting Plan to the certificate of vote.

Mr. Burger and Mr. DiPersio agreed to work on the cul-de-sac waiver language prior to the referral to the Legal Department.

Mr. Fay explained the goal would be to submit everything in final form to the City Solicitor at the next meeting and to have a final vote at the February 12, 2024, meeting.

The Board discussed and reviewed the procedures under the street acceptance and the construction guarantee. Mr. Burger explained his concern is, if they sign the covenant, they would lock themselves into complying with section L.1.(b) which requires a lot be held. Mr. Fay explained once the covenant is in place, and the Board agrees on the amount for the bond and the bond is posted, then the lot is released from the covenant.

Mr. DiPersio explained if they choose to go with a cash bond for the street acceptance surety, the language under section 9 in the covenant can be revised in accordance with that. Instead of referencing said lot number, it would reference the cash bond. Mr. Fay suggest language "released from the requirements of Section L upon deposits of the cash bond".

On a motion by Mr. LaVenture, second by Mr. Russ, the Board voted to refer 547 Stow Road to the Legal Department for review addressing the following questions/revisions:

- If the Board/City accepted cash instead of one of the lots being held as security, how does the Board value that lot under section L.1.(a).
- Ask the solicitor to review the changes provided by Mr. Burger addressing the following:

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- Add an additional waiver for the vegetated cul-de-sac on the plans, certificate of vote and covenant;
 - Add plan revision dates, November 10, 2023, and December 20, 2023, to the certificate of vote and the covenant *additional date may be required once cul-de-sac waiver has been incorporated;
 - Add an additional condition (H) Planting Plan to the certificate of vote;
- Yea: Fay, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

7. Definitive Subdivision (None)

8. Signs (None)

9. Correspondence (None)

10. Unfinished Business

A. Working Group

Mr. LaVenture update the Board and explained the Working Group met on January 3, 2024, with two partners from Northeast Porous Paving via Teams. He explained we are waiting for additional information and once everything is compiled it would be presented at a future meeting.

Mr. Fay explained he was brainstorming on how it would be nice to have three options for developers and went over some examples. Larger surface areas, where it would be 3X the cost of the usual material, that provides this amount of drainage with a scale. The most expensive would only be used on driveways. Having in place a few different technologies that the Board can ask for depending on the situation.

Mr. LaVenture explained once the Board sees the presentation, there will be a better understanding on how it has specific applications and that it is not best suited for roadway use. Mainly it will be used in part, not in whole, for parking areas, etc.

11. Calendar Updates (None)

12. Public Notices of other Cities & Towns (None)

On a motion by Mr. Hughes, seconded by Mr. LaForce, the Board voted to adjourn the meeting. Yea: Fay, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

Respectfully submitted,


George LaVenture/Clerk

/kml