

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

April 06, 2020

The **Remote Meeting** of the Marlborough Planning Board was called to order at 7:00 pm. Members present- Barbara Fenby, Sean Fay, Phil Hodge, George LaVenture, Chris Russ and Matthew Elder. City Engineer, Thomas DiPersio, and Planning Board Administrator, Krista Holmi, also participated in the remote meeting. IT Director, Mark Gibbs, participated to provide technical backup.

1. Meeting Minutes

A. March 09, 2020

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the minutes of March 09, 2020. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

B. March 23, 2020

On a motion by Mr. LaVenture, seconded by Mr. Russ, the board voted to accept and file the minutes of March 23, 2020 with the correction of a typo in paragraph 4. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

2. Chair's Business

A. Communication from Solicitor Grossfield regarding signed Open Meeting Law Order- Discussion of how to proceed with Planning Board business.

Mr. LaVenture read from the March 13, 2020 email communication from City Solicitor Grossfield which summarized the 3-12-20 Executive Order issued by Governor Baker modifying certain requirements of the Open Meeting Law (effective immediately). If remote meetings require public participation, approaches may include:

- Providing a call-in conference number on the city website so members can deliberate in an “open session”, and members of the public can have the opportunity to access and present/participate to the extent required by law.
- Use of video streaming/conferencing service
- Encouraging receipt of comments or public input via email in advance and/or real-time, which can be read by the public body.

On a motion by Mr. LaVenture, seconded by Mr. Elder, the Board voted to accept and file the correspondence. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

Ms. Fenby acknowledged the Board's ability to join the meeting but wasn't sure if the general public could participate without an invitation. Ms. Holmi explained that the meeting link and call-in phone number was available online at the Planning Board website. There were several people who either called in or used the website link to observe the meeting. The Board will use the Microsoft Teams application moving forward for remote meetings until the Governor's emergency order is lifted.

B. General Policy Discussion – Zoning and Variance Requests

Ms. Fenby requested that Mr. Fay introduce the policy discussion topic. Mr. Fay was not immediately available. He joined the meeting and indicated that he had dropped out for about 20 seconds. Mr. Fay said the Board has a tradition of not acting on sign variance requests and other matters if the property is out of compliance. He recounted two past examples. The first example was a tenant request for a sign variance. The property owner had utilized all available sign space for his own purposes and made no accommodation for tenants. The second variance request noted was for a gas station who had non-compliant signs on the property. The Board did not act on the variance request until the property owner removed the non-compliant signs. Mr. Fay suggested adopting a formal policy of not acting on a variance request when the property was not otherwise in compliance with City Code.

For other matters such as providing recommendations to the City Council regarding zoning changes, Mr. Fay suggested a policy of requesting that the City Council not act on a variance request until the property is brought into compliance. The example provided was a property that is the subject of a rezoning request that is not in compliance with the sign ordinance or that has businesses that are not allowed in the zone other than changes that are the subject of the variance request. Ms. Fenby asked if the Board should set a formal policy and inform applicants of the policy. Ms. Fenby polled the members. Mr. LaVenture likes the idea to require compliance with local ordinances. Mr. Hodge is in favor of establishing a policy. Mr. Russ and Mr. Elder also agree that properties should comply prior to making variance requests or requests for zoning amendments.

Mr. Fay discussed the mechanism for ensuring compliance. Should Code Enforcement be involved in the determination, or should the Planning Board make a judgement? Chair Fenby believes that Code Enforcement has a role. Mr. Russ expressed his preference for making the determination before the matter is presented to the Board. He preferred that the determination be part of the application process. Mr. LaVenture agreed with Mr. Russ and thinks Code Enforcement is the expert for determining compliance. Mr. Hodge and Mr. Elder agree. If an applicant knows that compliance is part of the application, there won't be any surprises.

Ms. Fenby said sign variances are straight forward since the requests are made directly to the Board. What about zoning amendments where matters are referred to the Board from the City Council? The Council will not provide a review prior to referring the matter to the Board. Mr. Fay believes that the Planning Board can encourage the Council to withhold action on the requested zoning amendment until the property is compliant. Ms. Fenby polled the Board. Mr. Elder was called but was muted. Mr. Hodge felt it was reasonable to advise the City Council. Mr. LaVenture concurred. Mr. Elder and Mr. Russ agreed. Chair Fenby asked how to proceed. Should the Board write a policy? Ms. Fenby suggested Mr. Fay draft a policy and forward it to Ms. Holmi for the Board's consideration at a future meeting.

- C. Set New Public Hearing Date: Council Order 20-1007947 – Proposed Zoning Amendment to Chapter 650, §5, §17, & §18 – Contractor Storage Yards and the Proposed Rezoning of land located on Farm Road, identified as Map 85 Parcel 12. The Board selected April 27, 2020 for the public hearing date. (Note: Due to the continuing executive order limiting public gatherings, this hearing will be advertised, opened without public testimony on April 27, and continued until May 18, 2020.)

Before moving on, Chair Fenby asked how the Board should proceed with ANRs? Ms. Holmi referenced a communication from Solicitor Grossfield that was distributed that afternoon. While not explicitly mentioning ANRs, the communication summarized points in a new order, Chapter 53 of Acts of 2020 "An Act to address challenges faced by municipalities and state authorities resulting from COVID-19". Section 17 of this law addresses land use permit applications and deadlines during the Governor's state of emergency. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the correspondence and request a Legal opinion on whether Chapter 53 of Acts of 2020 applies to matters before the Board. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

Chair Fenby also reminded the Board that the continued public hearing on the proposed zoning amendment on livestock farms is scheduled for April 27th. How should the Board proceed? Ms. Holmi indicated that the public comment portion is closed and that additional comments from the Board of Health and the Building Commissioner will be included on the April 27 agenda. Mr. Russ asked if the Leister ordinance was shared with the Board of Health and Building Commissioner. Ms. Holmi indicated yes. The Building Commissioner said that it's preferred to have Zoning deal with the authority of allowing the uses and let the Board of Health deal with how to keep and raise livestock.

3. Approval Not Required (None)

4. Public Hearings (None)

5. Subdivision Progress Reports (City Engineer, Updates and Discussion)

- A. Goodale Estates- City Engineer DiPersio updated the site work which included grading of detention basins and the installation of drainage structures and granite curbing. Most (if not all) lots have been sold. The subdivision is in good shape for completion on the existing timeline (June 30, 2020), but an extension on the completion of the subdivision will be required since there will be extensive construction site work on the lots. It is not advisable to finish the roadway until the heavy construction traffic is complete.
- B. Commonwealth Heights – The continuation of the public hearing is scheduled for April 27th. It is anticipated that the hearing will be again continued until a future date, since the state of emergency remains in effect, and no in-person testimony is allowed at this time. The applicant is still working on the required environmental report.
- C. 215 Simarano Drive - Ms. Fenby asked about the Simarano Drive project. Mr. DiPersio confirmed that the applicant had developed an approved site plan, and they will not move forward with the subdivision.

6. Preliminary/Open Space /Limited Development Subdivision Submissions (None)

7. Definitive Subdivision Submissions (None)

8. Signs (None)

9. Correspondence (None)

10. Unfinished Business

- A. Communication from Assistant City Solicitor Piques – Forest Grove Subdivision - Approval of Lot Release Document
Mr. LaVenture read the email correspondence from Assistant City Solicitor Piques into the record. The correspondence indicates that the release is in proper legal form. Since the state of emergency, the Board is not meeting as a group. Requiring each member to sign the release is cumbersome. Ms. Holmi asked the solicitor's office if Chair Fenby could sign a revised release on behalf of the Board. The solicitor's office indicated yes, if the Board voted to allow the Chair to sign on their behalf. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the correspondence and to allow Chair Fenby to sign the Forest Grove lot release on behalf of the Board. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

11. Calendar Updates

- A. Public Hearing- Council Order 20-1007947 – Proposed Zoning Amendment to Chapter 650, §5, §17, & §18 – Contractor Storage Yards and the Proposed Rezoning of land located on Farm Road, identified as Map 85 Parcel 12. Hearing Date: Monday, April 27, 2020 (to be continued without testimony to May 18, 2020).

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

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to adjourn the meeting of the Planning Board. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

Respectfully submitted,


George LaVenture/Clerk

/kih