

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

May 18, 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.

1. Meeting Minutes

A. April 27, 2020

On a motion by Mr. LaVenture, seconded by Mr. Elder, the Board voted to accept and file the minutes of April 27, 2020 as amended. Yea: Elder, Fay, Hodge, LaVenture, Russ and Fenby. Nay: 0. Carried 6-0.

2. Chair's Business

- A. Set public hearing date: Proposed rezoning of land off Valley St. identified as Map 82, Parcel 125, presently zoned partly "Residence C" and partly "Industrial" to be rezoned entirely as "Residence C", Marlborough Hub, LLC. June 22 was selected for the public hearing. (Council Order #20-1007976)
- B. Set public hearing date: Proposed Zoning Amendment to Chapter 650 to add a new Section 38 creating the Large-Scale-Ground-Mounted Solar Photovoltaic Overlay District. Assessor's Map 30, Parcel 4 and Assessor's Map 30, Parcel 4C. June 22 was selected for the public hearing. (Council Order #20-1007975)
- C. Request for update on Livestock Farm proposed zoning amendment (Council Order #20-10079015)
Chair Fenby requested that Councilor Robey update the Board on the proposed zoning amendment. Ms. Robey said a City Council vote on the amendment could come that evening. She indicates the amendment will include two of the modifications proposed by the Planning Board 1) No sale of eggs 2) Restrictive language on the placement of the coops in the front yard of a property. The coop placement language was prepared by Jeffrey Cooke, Building Commissioner. She confirmed that chicken coops do fall into the "accessory structure" category and are subject to their associated regulations. Mr. Russ asked whether any of the Board's other recommendations were adopted, including restrictions in which zones coops are allowed and restrictions that coops be on owner-occupied properties. Ms. Robey said no, these changes were not deemed necessary and questioned the fairness of only allowing owners. Mr. Fay objected to allowing tenants keep chickens. Tenants come and go, and if chickens are left without care, it will only take 2-3 days before animals perish. Ms. Robey indicated the Board of Health is anxious for this zoning amendment. Ms. Robey is confident that Code Enforcement will take the necessary steps to ensure zoning compliance, and the Board of Health will have the ability through M.G. L. to enforce the regulations.

3. Approval Not Required

- A. 26, 34 MacQuarrie Drive – Applicant: Jon Sowa, 26 MacQuarrie Drive, Marlborough, MA 01752; Land Surveyor: Hancock Associates, 315 Elm Street, Marlborough, MA 01752; Description of Property: Middlesex South Registry of Deeds Book 19272 Page 170. J. Dan Bremser, Hancock Associates.
Mr. Bremser indicated that while setting bounds in this neighborhood, a driveway on 26 MacQuarrie was found to be partially on a neighbor's lot. The ANR will remedy the encroachment by adding a small triangular parcel from 34 MacQuarrie Drive to 26 MacQuarrie Drive.
On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to refer the matter to Engineering for review and comment. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby; Nay: 0. Carried 6-0.

4. Public Hearings

- A. Continued: Commonwealth Heights Definitive Subdivision – Revised plan
Applicant - The Gutierrez Company; Project Engineer - Connorstone Engineering, Inc.

Location – 10.55 Acres located on the corner of Forest Street and Ames Street. Middlesex Registry of Deeds Book 31932, page 445 (Lot 14).

Chair Fenby reopened the public hearing. Mr. LaVenture read the public hearing notice into the record. As the state of emergency due to COVID-19 remains in effect, with no objections expressed, Chair Fenby continued the public hearing until June 8, 2020 at 7:00 pm. No public testimony was heard. The Board intends to take public testimony during the June 8 meeting, and abutters will receive notice. After moving on to item 4B, Ms. Holmi reminded the Board of a required vote on the extension for a decision on the subdivision application. (Following item 4B,) Mr. LaVenture read the May 14, 2020 email correspondence from Scott Weiss, Vice President of Development for The Gutierrez Company, who requested an extension of time for review and consideration of the definitive subdivision application until July 24, 2020. On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence and approve the extension of time for a decision until June 24, 2020. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby; Nay: 0. Carried 6-0.

- B. Continued: 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.

After a brief introduction by Chair Fenby, Mr. LaVenture read the public hearing notice into the record. Councilor Robey began with an overview of the evolution of the proposed zoning amendment. She recounted the amendment's history beginning in December of 2018 with revisions and multiple public hearings taking place before an amendment was approved in August of 2019. It only addressed home offices and home occupations, but not contractor or landscaper storage yards. Code Enforcement began issuing citations for zoning violations resulting in contractor appeals to the ZBA. Following a denial on the contractor appeals, the ZBA decision was appealed to Land Court. Both Mayor Vigeant and Solicitor Grossfield indicated that this proposed zoning amendment is a culmination of the work toward a resolution, and the negotiated amendment before the Board is an all-or-nothing proposal. Mayor Vigeant spoke in favor of the amendment saying the amendment will assist in addressing issues throughout the City. He believes the earlier opposition was a result of misinformation which has been cleared up, and the City is ready to move forward. Councilor Robey indicated there were several letters of support that have been submitted to the Board, and she requested that the letters be read into the record.

Mr. LaVenture read the following letters into the record:

- 1) Communication from Solicitor Grossfield to Council President Ossing Re: Trombetta Family Limited Partnership vs. City of Marlborough Zoning Board of Appeals; DeMatteo v. Giunta et al as Members of the City of Marlborough Zoning Board of Appeals. The letter explains that the proposed zoning amendment is the result of a collaborative effort with both parties, and each party supports adoption of the amendment to address this type of land use as part of the city's zoning ordinances and each has agreed to dismiss their respective pending litigation if the zoning amendments presented are adopted.
- 2) Communication from Counselor Donald J. O'Neil Re: DiMatteo v. Giunta et al as Members of Marlborough Zoning Board of Appeals Case No. 1981CV03045. The letter confirms his client's support of the proposed negotiated amendments and confirms a dismissal with prejudice will be filed within 14 days of passage of the proposed zoning amendments.
- 3) Communication from Christopher J. Alphen, Esq. Re: 19 MISC 0000509 Trombetta Family Limited Partnership v. City of Marlborough Zoning Board of Appeals. His client fully supports the proposed amendment. If the zoning ordinance amendment is passed, Trombetta will file a stipulation of dismissal with prejudice within 14 days.
- 4) Communication from Paul Giunta, Chairman, Zoning Board of Appeals Re: Support for Proposed Zoning Ordinance Amendment Contractors' Yards and Landscape Contractor's Yards. The letter confirms the Board's 2-25-20 vote of support for the proposed zoning ordinance amendment.

On a motion by Mr. Russ, seconded by Mr Laventure, the Board voted to accept and file the correspondence. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0 Carried 6-0. With no further comment, Chair Fenby closed the public hearing.

Following a lengthy discussion by Board members, the following motion was made:

On a motion by Mr. Fay, seconded by Mr. Hodge the Board voted to make a generally favorable recommendation to the Marlborough City Council on the proposed zoning amendment. Yea: Fay, Hodge, LaVenture, Russ, Fenby Nay: Elder. Motion carried 5-1.

In its decision, the Board made the following comments:

The Board was instructed that the zoning amendment was to be evaluated "as is"; nonetheless, the Board applied its typical standard: Does the proposed zoning proposal benefit the City, is it otherwise consistent with the intent of zoning regulation, does the proposal fit into the neighborhood(s), and what is the potential impact on neighbors?

After consideration, the Board voted to provide a generally favorable recommendation on the proposed zoning amendment but expressed reservations that the existing proposal did not address practical areas of control including storage setbacks, limitations on stacked material storage, storage of refuse, storage of unregistered vehicles and the absence of the five-foot screening requirement for existing yards. The Board expressed concern that not enough was being done to protect the residential abutters to existing yards. In his opposition, Mr. Elder expressed concern with both the pre-negotiated amendment process and portions of the amendment content. Particularly concerning is the two-year timeframe for site plan review, which he deemed as far too long, feeling this could be accomplished in months, not years.

Regarding the proposal to rezone the specific parcel, the Board expressed concern about the habitual non-compliance on that parcel including multiple sign violations (banners affixed to a fence, etc.), the parking of trucks on grass adjacent to the street with screen printed advertising, and automotive uses on the property that may not be consistent with current or proposed zoning. The Board expressed a preference that the rezoning of the parcel be delayed until the property was brought into compliance. The Board agreed to refer the matter to Code Enforcement and encourage enforcement of the violations of applicable regulations.

With reservations as noted, the majority felt that the zoning amendment proposed was preferable to none.

5. Subdivision Progress Reports

A. Goodale Estates (Update from City Engineer - Subdivision Expiration – June 30, 2020)

City Engineering DiPersio informed the Board that there has been a lot of activity on the property and shared that a couple of construction issues surfaced. Utilities for one lot was installed in the wrong location. A stub was relocated to resolve the issue. There was no gas line installed to the lots. The developer has no control over Eversource's installation schedule. Based on discussions with Mr. Gillis, we anticipate a request for a bond reduction and request for an extension on the subdivision approval. Mr. DiPersio indicates that there is considerable site work on all house lots, and it is preferable to delay final paving. Mr. DiPersio said Mr. Gillis will share a new construction schedule at the next meeting.

Mr. Hodge asked about the frequent jack hammering noise from the development. Mr. DiPersio confirmed that there is a lot of ledge on the property, and the site work will continue for some time.

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

7. Definitive Subdivision Submissions (None)

8. Signs (None)

9. Correspondence

- A. Memo from City Engineer DiPersio Re: Zoning Board of Appeals -Request for comment- Floodplain and Wetland Protection District Special Permit Application, Property located at 339 Boston Post Rd. East, Map 72-35, 73-28, 24,26.
City Engineer DiPersio reminded the Board of a special permit application for a proposed development within the floodplain overlay district. The applicant must meet the minimum performance standard of providing an equivalent compensatory storage area in the vicinity of the fill area. While the threshold has been met, additional review by Engineering and Conservation is ongoing. Because abutting properties are prone to flooding, the City is suggesting adding additional safeguards. Mr. DiPersio indicated he had received a new plan set that afternoon, but he didn't have an opportunity to review it. On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file the correspondence. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Carried. 6-0.
- B. Notice of Affordable Housing Lottery- SEB Housing for Modera Framingham
On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file the correspondence. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Carried. 6-0.

10. Unfinished Business

- A. Draft Policy Discussion – Zoning and Variance Requests
The policy was referred to the City Solicitor for review following the 4-27 meeting. To date, no comment has been received from the Legal Dept. The Board continued the matter until June 8.

11. Calendar Updates

- A. 6-8-20 at 7:00 pm Continued: Commonwealth Heights Definitive Revised Sub. Plan
- B. 6-22-20 - Public hearing: Proposed Zoning Amendment to Chapter 650 to add a new Section 38 creating the Large-Scale-Ground-Mounted Solar Photovoltaic Overlay District. Assessor's Map 30, Parcel 4 and Assessor's Map 30, Parcel 4C. June 22 was selected for the public hearing. (Council Order #20-1007975
- C. 6-22-20 - Public Hearing: Proposed rezoning of land off Valley St. identified as Map 82, Parcel 125, presently zoned partly "Residence C" and partly "Industrial" to be rezoned entirely as "Residence C", Marlborough Hub, LLC. (Council Order #20-1007976)

12. Public Notices of other Cities & Towns

- A. Framingham Zoning Board of Appeals (6 Notices – See Electronic Agenda Packet)
On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file the notices.
Yea: Elder, Fay, Hodge, LaVenture, Russ and Fenby. Nay: 0. Carried 6-0.

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

Respectfully submitted,

George LaVenture/Clerk

/kih