

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

December 2, 2019

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: Barbara Fenby, Sean Fay, Phil Hodge, George LaVenture and Chris Russ. Absent: Matthew Elder. City Engineer, Thomas DiPersio, and Planning Board Administrator, Krista Holmi, were also present.

1. Meeting Minutes

A. October 21, 2019

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to approve and file the meeting minutes of October 21, 2019. Motion carried.

B. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to approve and file the meeting minutes of November 18, 2019. Mr. Fay abstained. Motion Carried.

2. Chair's Business (None)

3. Approval Not Required

A. ANR 92 Crowley Drive, Assessor's Map 15 Parcels 22 and 23 – Applicant: First Colony Crowley Drive One, LLC, Jon Delli Priscoli - Representative. Engineer: Arthur F. Borden & Associates, Inc., 302 Broadway, Unit 4, Raynham, MA.

Mr. Delli Priscoli explained that the purpose of the plan was to make a minor area adjustment between adjoining commonly-owned lots. The proposed retirement community development project recently went through site plan review. This ANR ensures that the development plan meets the required setbacks. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the ANR application and plan. Mr. LaVenture read the review letter of Assistant City Engineer Collins into the record. The plan dated 10-29-19, revised 11-22-19, modifies Lot 3 and Lot 4, creating Lots 3-1 and 4-1. Both lots have adequate area and frontage, meet the lot shape requirement and have present adequate access. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the correspondence and endorse the above referenced plan as Approval Not Required under the Subdivision Control Law. Motion carried.

To allow time for City Councilor participation prior to their 8:00 meeting, Ms. Fenby requested a motion to move item 4B up in the agenda. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to take up item 4B next in the agenda. Motion carried.

4. Public Hearings

B. Public Hearing - Council Order Number 19-1007716A, Proposed Zoning Amendment, Section 650-7, entitled "Districts Enumerated"; Section 650-17, entitled "Table of Uses"; New Section, Section 650-40, entitled "Special Provisions Applicable to the Route 20 East (Wayside) Zoning District.

Chair Fenby opened the public hearing. Mr. LaVenture read the public hearing notice into the record. Chairperson Fenby provided instructions to those in attendance. The hearing was conducted in the following stages: 1) Presentation 2) Those speaking in favor 3) Those speaking in opposition 4) Comments and questions from Board members.

Presentation:

City Councilor Delano and Josh Fiala, Principal Planner, Metropolitan Area Planning Council (MAPC) were in attendance to represent the proposed zoning amendment. Mr. Delano explained that the concept for the proposed zoning amendment along Route 20 has been around since about 2012. There have been numerous meetings and much discussion resulting in the proposed amendment before the Planning Board.

Mr. Delano said that historically the east side of RT 20 has been a challenging business climate. The proposed zoning amendment will better support businesses in the area, while facilitating overall improvements to make the area a better place to live, work and play. Marlborough is sometimes criticized that proposed zoning changes are often developer driven. The purpose of this amendment is to be forward thinking by providing the framework for design standards and desired community growth. While the original plan was to extend the zoning district further to Phelps St., due to some councilors' reservations, the scope has been narrowed. The zone is now proposed from the Sudbury line to Wilson St. It is Mr. Delano's hope that the next Council will build upon this initial zoning work and extend the zone further west. Mr. Delano invited Mr. Fiala from MAPC to continue the presentation.

Mr. Fiala explained that this zoning opportunity parallels planned street improvements for the RT 20 E corridor. The zone change will encourage development that is more compact and pedestrian friendly and allow for commercial, mixed-use development to promote livability and improved quality of life. The proposed zoning ordinance integrates design standards to align site and building design with enhanced quality and walkability. One key feature is encouraging inter-parcel connectivity, enabling vehicular traffic inside developments vs. multiple curb cuts to RT 20. (Apex was used as an example.) Goals are articulated as allowed uses in the ordinance. Mr. Fiala also mentioned RT 1 in Saugus and RT 9 in Wellesley as models of previously "automobile centric" areas that are benefiting from this approach. Mr. Delano agreed that timing for this zoning change is favorable considering the planned roadway improvements on RT 20 East.

Speaking in Favor:

No person spoke in favor of the proposed amendment. Ms. Fenby closed that portion of the hearing.

Speaking in Opposition:

No person spoke in opposition to the proposed amendment. Ms. Fenby closed that portion of the hearing.

Questions and Comments from Board Members:

City Engineer DiPersio asked about page 3, section G on parking access. The ordinance would appear to require development work on property that is not their own. Mr. Fiala said that the access requirement encourages properties to work on internal connectivity vs. reliance on RT 20 for passage between parcels.

Mr. Fay asked how the ordinance affects Marlborough Nissan. Mr. Delano stated that the zone did not allow expansion of car sales across the street. Mr. Fay mentioned the redevelopment of the Marist property in Framingham, which is now "The Branches of Framingham", an assisted living and memory care facility. He wondered whether the Sisters of St. Anne could someday be developed in a similar way. Referencing the Table of Uses, the response was no, retirement communities are not an allowed use in the district.

Mr. Fay also asked about the mobile home park that is included in the proposed zoning district. Will this amendment ultimately push people out if a new mixed-use development is proposed? There could be a loss of low-income housing in the City. Mr. Delano said that mobile home parks are extremely difficult to close. He did not anticipate the amendment to affect the existing mobile home park. Mr. Delano stated that many of the residential parcels were already removed from the proposed ordinance. Mr. Fay wondered why the park was included in the first place then. Mr. Fiala pointed to the geometry of the zone. The inclusion of the park gives depth to the zone as opposed to only including parcels that are less deep but abut RT 20. Mr. Hodge expressed concern. Rezoning could facilitate the reduction of low-income housing. We shouldn't discount this potential impact.

Mr. LaVenture asked if similar zoning changes met the desired expectations. Mr. Fiala pointed to Rt 1 in Saugus. This was a very automobile-centric, highway-like setting. Mixed uses are beginning to transform this area; changes do not transform instantaneously, but incrementally.

Chair Fenby expressed that the proposed zoning district is too limited. The former McGee Farm is prime for development, but this area is not included in the new district. It would be preferred to include the area to Phelps Street, otherwise we are missing an opportunity. Mr. Delano said that Councilors have been debating the boundaries for quite some time. This abbreviated district is a compromise first step that can be expanded upon in the future. Ideally, the district would be extended.

Mr. Russ would like to see more types of housing added at various price points and to extend the district as far as possible. Mr. Delano said that part of the reason the district is more limited is that some Councilors feared losing its grocery store in the Price Chopper Plaza. Mr. Russ also asked how the 52' height restriction was derived and how it compares with existing structures. Mr. Delano explained that there are opportunities to increase height by special permit. Councilors are sensitive to abutting properties and how developments may affect residents. Mr. Fay expressed his consistent reservation in the language "at the discretion of Council". He added, the Council's composition is variable, and it is preferred to spell out the rules as clearly as possible and not leave the decisions up to a City Council of uncertain makeup. Mr. Delano acknowledged the benefit of allowing some flexibility. Sometimes a special permit will tip the scale in establishing a project's financial viability. Members also asked about hotels. Mr. Fiala said that hotels will be limited to more "boutique-style" developments as opposed to large major chains. Mr. Hodge reiterated his point regarding low-income housing. Anyone following the news realizes the impact of development on low income housing. Development is creating a housing crisis in many places. In the current district, the trailer park seems to be singled out.

As there were no comments or questions, Ms. Fenby closed the public hearing. Mr. Delano said if the Board was ready to make their recommendation, the Council would appreciate their comments. If the Board needs additional time, that is fine. On a motion by Mr. Fay and seconded by Mr. LaVenture, the Board voted to make a favorable recommendation to the Marlborough City Council on the proposed zoning amendment with two additional recommendations:

- 1) That the Wayside Zoning District be expanded to Phelps St. If this extension cannot be accomplished with this proposal, the matter should be taken up by the next Council in 2020.
- 2) That the Council revisit their justification for including the mobile home park on the west side of the district. Motion carried.

On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to take a brief recess to deliver their recommendations to Council. Motion carried.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to reopen the meeting and return to item 3B. ANR 285, 297 Concord Rd. Motion carried.

3. Approval Not Required

- B. ANR 285, 297 Concord Rd. Middlesex South Registry of Deeds Book 19501 page 343 and Book 30947 page 443. Applicants: Paul, Joseph and Sandra May, Engineer: Hancock Associates, 315 Elm Street, Marlborough, MA 01752, J. Dan Bremser, applicant's representative.

J. Dan Bremser of Hancock Associates introduced the ANR. He acknowledged that the ANR has previously appeared before the Board informally. He summarized that the lots created with the ANR are all oversized for the zone – 38K, 34K and 35K square feet, but the issue of frontage has been debated, since the frontage on the plan is derived along an unconstructed way. Mr. Bremser pointed to the work of attorney Sem Aykanian that sought to establish the unconstructed portion of Hemenway St. as a public way. He read the definition of "Subdivision" from Massachusetts General Laws, Chapter 41. He continued, stating his position that if the lots have frontage along a public way, the question of adequacy of the way is irrelevant. He said that the gates on each end of the unconstructed road can provide access to emergency vehicles.

Referencing the "Ball case", Mr. Bremser shared Attorney Aykanian's characterization of the Hemenway Street access as 'could be better but manageable', vs. 'illusory'. Mr. Fay reminded Mr. Bremser that there is a significant difference between the opinion of an attorney advocating for his client and an established fact. Mr. Bremser asserts that the burden to maintain Hemenway St. is the City's. Mr. Fay disagreed that if the portion of Hemenway Street in question is a public way that the adequacy of the way providing the required frontage is irrelevant. Mr. Fay stated that this is a distortion of the findings in the Ball case, and that in prior meetings of the Planning Board, the Board concluded that access was illusory in keeping with the Ball case based on the comments of Chief Breen. Mr. Fay stated that that portion of Hemenway Street is a path to the forest. Mr. Fay stated that development of Mr. May's parcel could occur if that portion of Hemenway Street is a public way by improving the roadway to an acceptable standard. Mr. Bremser contends that if the City did not intend for the roadway to be considered a public way, the City should have discontinued that section of Hemenway as a public way. Mr. Fay questioned whether the applicant had established that that portion of Hemenway Street is a public way and reminded Mr. Bremser that the burden was on the applicant to do so.

Mr. Fay recapped the Board's meeting with Attorney Aykanian for Mr. Bremser, since he was not at the meeting. He stated that he was surprised to see this ANR application since at that meeting there was a clear consensus of the Board that that portion of Hemenway Street could not be used to create the required frontage for an ANR plan. This was confirmed by Chief Breen's comments in a public meeting, photographs offered by Solicitor Rider, and site visits by Board members. Ms. Fenby added that there are any number of unconstructed ways throughout the City. Ignoring a standard for adequate access in determining whether the plan qualifies for Approval Not Required would set a bad precedent. Mr. Fay said that since adequate access remains unestablished, the applicant may wish to withdraw the application and consider another means to develop the lot by improving the way if it is established as a public way. Mr. Bremser's client is away, so that is not possible. Mr. Fay suggested consulting with his client before the next meeting of the Planning Board on December 16 and consider withdrawing the application without prejudice. Mr. Fay reiterated that there are significant questions of law involved with this application, and that it is unlikely that the applicant will be able to meet their burden of proof by the next meeting, and that the City Engineer, without further findings, could not send a letter recommending approval of the plan, only that the dimensional requirements were met. Based on that, Mr. Fay stated that he would not be able to vote in favor of the plan. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to refer the ANR plan to Engineering. Motion carried.

4. Public Hearings

- A. **Continued:** Public Hearing - Council Order Number 19-1007738C, Proposed Zoning Amendment Section 650-8, 269 Mechanic Street. Proposed change from Limited Industrial to Residence B. (Assessor's Map 56, parcel 126, plus a small area behind the parcel within an easement area.) Attorney Michael Norris **Communication from City Solicitor Grossfield re: 269 Mechanic - Legal opinion request.**

Chair Fenby reopened the public hearing continued from 11-18-19. Attorney Michael Norris was present for the hearing.

On a motion from Mr. Fay, seconded by Mr. LaVenture, the Board voted to waive the reading of the communication from City Solicitor Grossfield. Motion carried. Having confirmation of the applicant's rights, and with no further questions from the Board, Chair Fenby declared the hearing closed. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to make a favorable recommendation to the Marlborough City Council on the proposed zoning amendment. Motion carried.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to take a brief recess to deliver their recommendation to the City Council. Motion carried.

On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to reconvene the meeting and move to agenda item 5. Motion carried.

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

A. Goodale Estates

Mr. LaVenture read the November 20, 2019 emailed letter from Kevin Gillis, Managing Director, Northborough Capital Partners into the record. Mr. Gillis requests that in accordance with the Covenant, that the amount of the bond required to ensure the completion of the subdivision be established. Mr. Gillis also provided a draft deed for the roadway and drainage easement, which will become part of the petition for City Council acceptance at the end of the subdivision maintenance period. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the materials and to refer the matter of the establishment of the bond securing the completion of the subdivision to Engineering. Motion carried.

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

7. Definitive Subdivision Submissions (None)

8. Signs (None)

9. Correspondence (None)

10. Unfinished Business (None)

11. Calendar Updates (None)

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

On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to adjourn. Motion carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'G. LaVenture', written over a horizontal line.

George LaVenture/Clerk

/kih