

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

December 16, 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 (arrived 7:10 pm), Chris Russ and Matthew Elder. City Engineer, Thomas DiPersio, and Planning Board Administrator, Krista Holmi, were also present.

1. Meeting Minutes

A. December 2, 2019

On a motion Mr. Fay, seconded by Mr. Russ, the Board voted to accept and file the minutes of December 2, 2019. Matthew Elder abstained. Motion carried.

2. Chair's Business

Mr. LaVenture ran late due to a work commitment. Chair Fenby requested that Mr. Russ serve as Clerk until Mr. LaVenture arrived.

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 Attorney Sem Aykanian, owner's representative.

Mr. Russ read the 12-12-19 Engineering review letter of City Engineer DiPersio. On a motion by Mr. Elder, seconded by Mr. Hodge, the Board voted to accept and file the correspondence. Motion carried. In his letter, the City Engineer outlined several points for the Board's consideration to determine whether the plan shows a subdivision as defined in MGL Chapter 41 Section 81L or whether the plan can be endorsed as "Approval Not Required". These points include: 1) The status of the gated, unconstructed portion of Hemenway Street as a public way. 2) Hemenway Street's ability to satisfy the definition of "frontage" for the purpose of endorsement of the ANR plan. 3) Whether the "vital access" standard is met for the new building lot.

Mr. Fay recounted some of the history of this proposed plan which had been before the Board informally in past years. Mr. Fay stated that the City's former City Solicitor had also informally researched Hemenway Street's status as a public way, but a final opinion was not made. Mr. Fay acknowledged the work of Attorney Aykanian in establishing a case for Hemenway St. as a public way. Mr. Fay did not wish to challenge that position at present but did question whether the applicant had established that there was present adequate access to the building lot from the public way providing the requisite frontage. Mr. Fay stated he found no evidence that the apparent illusory access provided by the unconstructed portion of Hemenway St. meets the access standard contemplated by the subdivision control law.

Mr. Fay reminded those in attendance that Fire Chief Breen appeared before the Board (on May 7, 2018) as part of a previous informal discussion. He indicated that access with traditional firefighting apparatus would be problematic. Mr. Fay pointed to a number of cases that use vital access in determining whether a plan qualifies as "Approval Not Required" under subdivision control law. Mr. Fay cited the Hrenchuk case involving frontage on RT 95. There was no actual access to Route 95, the public way on which Hrenchuk claimed his lots had frontage. City Engineer DiPersio asked whether that case involved a limited access highway. Mr. Fay was not completely certain. He mentioned additional case law that supports the need for present and non-illusory adequate access. Mr. Fay stated that the Board faces a dilemma, since this access issue is unresolved, and the Board must take action that evening.

Attorney Aykanian requested permission to address the Board. (granted) While he did not argue with Mr. Fay's case findings regarding access, he requested that the Board take a broader view of the plan. He feels that the Board should consider the access from Concord Rd. as providing safe access, and this plan should not be grouped with other situations involving problematic access issues. Attorney Aykanian acknowledged that his client was unlikely to win on a possible appeal, since courts have consistently backed planning boards' decisions made for the health and safety of the public. Mr. Fay said his research indicates that consideration of vital access from the legal frontage (not Concord Rd.) is valid. He summarized the Board's view that the unconstructed way did not provide practical vital access for emergency vehicles to the proposed building lot. Chair Fenby added that the applicant may wish to withdraw at this point unless adequacy of the public way is established. She asked for the Board's sense on the matter. Mr. LaVenture, Mr. Russ, Mr. Elder and Mr. Hodge indicated they were unlikely to vote for endorsement until the issue of access was resolved. Mr. Fay said the Board wants to act responsibly but provide the applicant with another opportunity to find a case that discounts the (illusory) access of the proposed frontage along Hemenway St. Upon consultation with his client, Attorney Aykanian requested that the plan be withdrawn. The request was so granted.

On a motion by Mr. Elder, seconded by Mr. Fay, the Board voted to move to item 4B to allow for City Councilors' participation in the public hearing on the proposed Commonwealth Heights subdivision.

4. Public Hearings

- B. Definitive Subdivision Application: Marlborough/Northborough Land Realty Trust c/o The Gutierrez Company, 200 Summit Drive, Suite 400, Burlington MA 01803. Engineer: Connorstone Engineering, Inc., 10 Southwest Cutoff, Suite 7, Northborough, MA 01532. Description of Property: Middlesex South Registry of Deeds Book 31932 Page 445. (Property described as 10.6 acres located at the northeast corner of Ames St. & Forest St.) Scott Weiss from The Gutierrez Company and Vito Colonna of Connorstone Engineering were in attendance for the presentation.

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. Mr. Elder wished to disclose that while he is not a direct abutter to the project, he could be considered and abutter to an abutter. He wished to disclose this fact out of an abundance of caution.

Presentation:

Scott Weiss of The Gutierrez Company addressed the room. He said the 23-lot subdivision is a resubmittal of a previously approved project in 2005/2006. The project was partially constructed during 2007 and 2008, when drainage and utility work were done to the site. The Gutierrez Company is not a home builder, and the site was previously under contract with Birchwood Development. The developer ran into erosion control issues, and the site was shut down on several occasions to allow for remedial work. "Then the bottom fell out of the economy." The builder walked away from the project and Gutierrez was granted extensions of approval numerous times as they worked on finding a new partner and pursued alternative uses for the site, but these uses required a zoning change that did not occur. Since the site remains zoned residential, this plan will provide for a residential development consistent with current zoning.

Vito Colonna of Connorstone Engineering next addressed the group. Mr. Colonna described the current conditions of the 23-lot project. The site has a general slope down from Ames Street. There are existing sewer connections available off Ames St. and MacKay. Catch basins are installed and are complete. Catch basins were recently cleared of debris.

The plan includes a dead end 1017' roadway (waiver required), which previously was the preferred configuration over the alternative plan that included through traffic to Mackay. The plan also calls for a restricted emergency access roadway.

Speaking in Favor:

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

Speaking in Opposition:

Lorraine Suazo – 161 Conrad Rd. is opposed to the plan. She believes the plan will result in more erosion, traffic and noise and will also have a negative impact on area wildlife. Loss of habitat from surrounding development has resulted in more wildlife in the neighborhoods.

Marguerite Sawyer – 33 Teller St. is opposed to the development. Her home is one of the properties that was affected by the runoff from the previous developer. She said that they clear cut the site, which destabilized the soil. Runoff was significant and ran into the sewer system. She isn't confident that a new developer will do things differently.

John Sawyer – 33 Teller St. is also in opposition.

With no further comment, Chair Fenby closed that portion of the public hearing.

Questions and Comments from the Board:

Ms. Fenby requested that Mr. LaVenture read the City comments into the record. Comments were provided by the following:

i. Board of Health- John Garside, Interim Director of Public Health

The submitted soil management plan is from 2006. Due to the historic use of this property as an apple orchard, the plan must be updated and include the following: 1) a current conditions assessment 2) an updated operational plan for on-site and off-site soil management and 3) the names of current consultants, agents and engineers proposed for use. The Board of Health also recommends any approval be conditioned on the applicant providing funds allowing the City to employ an independent Licensed Site Professional (LSP) to review their operations, monitoring and data.

ii. Conservation- Priscilla Ryder, Conservation Officer

Ms. Ryder's comments state that 1) No wetland permits are required 2) Property falls within the City's Water supply Protection District and must, therefore meet the Total Suspended Solids (TSS) removal requirements for stormwater runoff. 3) Due to the site's prior use as an orchard, the Board of Health has the authority to require that the soils from the property be managed to MA Contingency Plan (MCP) standards based on contaminants found at the site. She also recommends a License Site Professional (LSP) be hired to prepare a new soil management plan as well as funding set aside for an independent LSP to advise the City and provide technical assistance on the plan review and monitoring. Sample conditions from similar projects were provided for the Board's consideration. 4) Due to the extremely high clay content on the site, proper erosion control measures are required. The Conservation Officer recommends the developer be required to hire an erosion control consultant approved by the City Engineer. Suggested language was provided for incorporation at the Board's discretion.

iii. Engineering- Timothy Collins, Assistant City Engineer

Mr. Collins detailed previous approval and subsequent expiration of the subdivision approval in 2017. Mr. Collins provided an accounting of prior work on the site. As-Built Plans documenting the completed work should be submitted to the DPW Engineering Division. The work "not completed" should be included in the new Definitive Subdivision Plan submission.

Mr. Collins detailed the one waiver for a roadway in excess of 500 feet. He states that topographic plans should be updated to reflect the completed site work, and the capacities of the detention basins should be certified (at values equal or greater than the original detention basin design.) Utility stub connections should be field verified and shown on the plans as existing and any adjustments to the municipal utility easements be made.

Engineering concurs with the site recommendations of the Conservation Agent and Board of Health. On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to accept and file the correspondences. Motion carried.

Mr. Elder supported the recommendations of the City officials, including the updated site topography and the employment of LSPs to provide independent oversight. Runoff must be managed. Mr. Fay asked if Mr. Weiss was aware of the recommendations of the City Officials. Mr. Weiss indicated he was aware of the recommendations and fully supported the conditions. Mr. Weiss was not with Gutierrez during the previous development but acknowledged the previous issues on the site. They have contacted the same Geotech and environmental professionals used on the Talia project next door. They are comfortable with independent review. They also recognize that site work must be done in stages.

Mr. Fay asked if Mr. Weiss had a current development partner for the site. Mr. Weiss indicated no, not at the present time. Mr. Fay asked what assurances can be provided that the same situation won't occur 3 years from now? Mr. Weiss recounted the request for a zone change that was previously requested to attract a partner. The effort did not result in a zone change. He hopes to complete the subdivision approval and find a new development partner. Mr. Fay asked whether the road will be built by next summer if he obtains approval. Mr. Weiss repeated that they are not builders, and they will be looking for a partner to complete the road and houses as one process. Mr. Fay said this scenario reminded him of the Blackhorse Farm subdivision that had languished for years waiting for a developer to complete it. After providing additional pressure to complete the road, sidewalk, curbing and streetlights, the property started to look like a neighborhood, and people wanted to live there, and houses were built. For that reason, Mr. Fay would be opposed to extensions of an approval if the road was not completed. Mr. Weiss will accept and commit to completing the roadway in the prescribed schedule. Mr. Elder stated that his project support was weakened with the knowledge that there is no developer in the picture. Mr. Weiss expressed optimism that by completing the approval process and permitting the site, a developer would follow. They are trying to work with the only development option they have, since the property is zoned for single-family homes. Mr. LaVenture said the Board will look forward to receiving the details of a plan addressing the City's comments. With no further comments or questions, Chair Fenby closed the public hearing.

On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to return to item 4A.

4. Public Hearings

- A. Definitive Subdivision Application: Richard and Joan Lavoie, 24 Clearview Drive and Richard Archibald, 18 Clearview Drive. Engineer: Robert Parente, 118 Deerfoot Rd., Southborough, MA 01772. Description of Property: 18 and 24 Clearview Drive, Marlborough, MA 01752. Prior to the start of the public hearing, Mr. Fay offered a disclosure statement. He resides on Clearview Drive beyond the area of the property abutters. To avoid the potential appearance of conflict, he has made a disclosure on this matter to his appointing authority.

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:

Project Engineer, Robert Parente, presented the plan to the Board. The applicants are seeking to resolve a building encroachment issue. The plan was filed seeking Planning Board endorsement modifying the lot lines of 18 and 24 Clearview Dr. and to waive the frontage requirement under current zoning. The stone wall between the properties has served as the lot line for over 20 years.

The resultant lots will look more conforming, but the frontage of 18 Clearview will be reduced to 60.79'. Current zoning is 100'.

Speaking in Favor:

Deb Estes and Catherine Mockus of 52 Clearview both spoke in favor of the plan. The lots are fine, and they have no issues with the reconfiguration. The new lots are aesthetically pleasing and pose no issues to anyone in the neighborhood. They hope the plan is approved.

Bob Archibald also spoke in favor of the plan. He noted this is essentially a paper change that has no bearing on how the properties have been or will be used. Nothing will change in the neighborhood.

Chair Fenby noted she spoke to an abutter from Farm Road. She had no issues with the plan. 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:

Chair Fenby asked Mr. LaVenture to read the included comments from the Board of Health and Assistant City Engineer into the record. On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file the correspondence. Motion carried.

In his review, City Engineer Collins noted that Lot 96A would require of waiver of the Planning Board of the frontage requirement of the Subdivision Control Law. The following deficiencies of current zoning requirements are noted: Lot 95A: Area and Lot Shape; Lot 96A: Lot Shape.

City Engineer shared a recent concern expressed by Building Commissioner Cooke. Deficiencies of lot shape and area would require variances from the Zoning Board of Appeals. Under these conditions, he was unsure of a mechanism that the owner would be entitled to apply for a variance, since the buildings are already present. During the 1980's, the Building Dept. issued a permit for the encroaching garage to be built, but the authorization to do so was based on an unintentional, yet inaccurate, representation of the lot lines. Mr. DiPersio said that he Building Commissioner cautioned the homeowners that there could be unintended consequences if the lots were put into non-compliance with existing zoning.

Hypothetically, if one of the structures were to burn to the ground, could they be rebuilt?

The Board discussed this issue. Mr. Russ wondered whether it was cleaner to change the lines with an ANR. Mr. Parente and Mr. Russ conceded that to do so would require very odd lot shapes to make the frontage areas and setbacks work. It may still not be possible to keep the lots in full zoning compliance. Ms. Fenby asked the Board for their sense on a potential vote. Mr. Hodge felt that there seems to be a growing consensus that the plan would pose problems. Mr. LaVenture and Mr. Elder felt that the plan would have their support, but once hearing the Building Commissioner's perspective, the viewpoint was changing. Mr. Fay asked if the Board could recess to see if the Commissioner was available to share his perspective with the Board. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to take a recess. On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to reconvene the meeting. Motion carried.

Mr. Cooke was not in the building, so the Board discussed further options such as an exclusive use agreement or easement. The lots would remain in zoning compliance. Mr. Parente felt this was preferable to other options that may exist such as a case of adverse possession.

Chair Fenby continued the public hearing. If necessary, the Board would entertain possibly having a special meeting of the Planning Board on January 6th. Mr. Parente will be in touch with Engineering to let them know how his client would like to proceed.

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

A. Goodale Estates - Engineering Bond Determination

On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to accept and file the December 6, 2019 letter from Assistant City Engineer Collins regarding the security determination for the completion of the Goodale Estates subdivision. The Board further voted to approve the recommended security amount of \$352,000.00. Motion carried. The Board requested that Mr. Gillis prepare the appropriate legal documents and submit the selected form of surety for Legal and Planning Board review.

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

7. Definitive Subdivision Submissions (None)

8. Signs (None)

9. Correspondence

- A. Supplemental Notice of Intent Pursuant to MGL c. 61A, §14 to Sell Land and Convert Use (23.17 Acres of land – Assessor's Parcels 73-28, 73-24, 73-26 and 73-26A)

On a motion by Mr. Fay, seconded by Mr. Russ, the Board voted to waive the reading of the November 11, 2019 correspondence from Heritage Farm, LLC and to place on file. Motion carried.

10. Unfinished Business (None)

11. Calendar Updates

- A. Commonwealth Heights Definitive Subdivision: Decision due prior to March 26, 2020 meeting of the Planning Board.

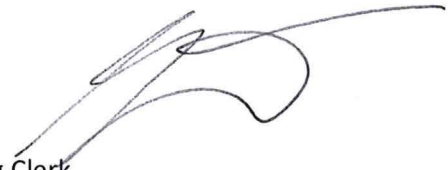
12. Public Notices of other Cities & Towns

- A. City of Framingham (5 Notices)

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file the notices. Motion carried.

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to adjourn the meeting of the Planning Board. Motion carried.

Respectfully submitted,



Christopher Russ/Acting Clerk
George LaVenture/Clerk

/kih