

**MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752**

1A

Call to Order

December 21, 2020

The **remote meeting** of the Marlborough Planning Board was called to order at 7:00 pm. Members present- Barbara Fenby, Matt Elder, Sean Fay, George LaVenture and Chris Russ. Phil Hodge absent. Meeting support provided by City Engineer, Thomas DiPersio, Assistant City Solicitor, Jason Piques and Planning Board Administrator, Krista Holmi.

1. Meeting Minutes

A. December 7, 2020

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file the December 07, 2020 meeting minutes. Yea: Elder, Fay, LaVenture, Russ and Fenby. Nay: 0. Motion carried.

2. Chair's Business (None)

On a motion by Mr. Fay, seconded by Mr. Elder, the Board voted to move item 10B to the next item in the agenda. Yea: Elder, Fay, LaVenture, Russ and Fenby. Nay: 0. Motion carried.

10. Unfinished Business

B. Communication from Assistant City Solicitor Piques re: 2 South Bolton St.- Request by Attorney Aykanian.

Mr. LaVenture read the 12-17-20 letter from Assistant City Solicitor Piques into the record. The letter reviewed the "Release from Plan Restriction" for the benefit of Atty. Sem Aykanian relating to a 1985 ANR plan for his property at 74 Main Street and 2 South Bolton Street. Assistant Solicitor Piques stated that in his opinion, there is no statutory authority for the Planning Board to release or amend a prior endorsed ANR plan, and that a new ANR plan would have to be prepared for consideration by the Planning Board. Mr. Piques further explained that an endorsement of an ANR plan is not an "approval", so it cannot be bound by MGL Chapter 41 Section 81W for the ability to modify or amend an approval of a plan.

On a motion by Chris Russ, seconded by Mr. Elder, the Board voted to accept and file the correspondence. Yea: Elder, Fay, LaVenture, Russ and Fenby. Nay: 0. Motion carried.

On further discussion on this matter:

Attorney Aykanian commented that he is looking for some direction from the Planning Board on subdividing his property. Atty. Aykanian stated the notation "not to be considered a buildable lot" is not called for by statute and is done as a common practice, which he agrees with. Atty. Aykanian surmised, if the Planning Board can place the note on the plan, it stands to reason they should be allowed to have the note removed from the plan. Chair Fenby reminded Atty. Aykanian that the Legal Department has given their opinion to the Planning Board, and they must follow that opinion. Ms. Fenby further explained that discussing the legality of the Legal Department's opinion should be directed to the Legal Department.

Atty. Aykanian questioned Assistant Solicitor's reference in his letter to having another ANR plan prepared, stating that the original plan was prepared by the City's engineers when he did not own the property, so how would he be able to recreate the original ANR plan (without the subject note – "not to be considered a buildable lot") if the lot does not conform to zoning and if he did not own the property at that time? Mr. Fay spoke on seeking a creative solution to this issue, suggesting the creation of condominiums for the property or drawing up a 99-year lease on the subject building. Mr. Fay questioned Mr. Piques whether the Planning Board could vote to recommend that the City not enforce the restriction on the plan. Attorney Piques was reluctant to speculate. He mentioned that the Community Development Authority had already released their rights in the note restriction and thought this was worth exploring as a possible solution.

Atty Aykanian stated that a postponement on a decision regarding this matter is acceptable, and that he would work with the Legal Department and the Building Commissioner on a solution.

If the matter can be resolved where building permits could be issued for interior work on the property at 2 South Bolton Street, then this matter would not need to be before the Planning Board. If he needs to re-visit this matter with the Planning Board, he would contact the Planning Board Administrator to be placed on a future Planning Board agenda.

3. Approval Not Required

A. Engineering Review Letter: ANR Application – 107 South Street/119 South Street/Mt. Pleasant Street (Vote)

Applicant: Matthew Jackson, PO Box 586, Marlborough MA 01752

Engineer/Land Surveyor: Dillis & Roy, 1 Main St., Suite 1, Lunenburg, MA 01462

Plan dated 12-01-20.

Deed References: Middlesex Registry of Deeds Book 54715, Page 491 (107 South) and Book 65389, Page 260 (119 South)

Location and Description: 107 South St- Accessor's Map-Parcel 81-86 and 119 South St. – Accessor's Map-Parcel 81-85.

Mr. LaVenture read the December 16, 2020 review letter from Assistant City Engineer Collins into the record. Mr. Collins explained that the purpose of the plan is to subdivide parcels to the rear of 107 South Street and 119 South Street to create a buildable lot with frontage on Mount Pleasant St. (Shown as Lot 2 on the plan). Lot 2 has the required area, required frontage and meets Lot Shape requirements for a buildable lot in a Residence A-3 zone. The existing Lot 1 at 107 South St. and the property at 119 South St. remain in conformance. On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence and to endorse the referenced ANR plan as approval not required under the subdivision control law. Yea: Elder, Fay, LaVenture, Russ and Fenby. Nay: 0. Motion carried.

B. 181 Boston Post Road (Winske) – Request for re-endorsement, Plan of Land Dated September 28, 2020, Revised October 15, 2020, Revised December 09, 2020. Communication from Robert J. Parente, Representative.

Engineering Review Letter (Vote)

Mr. LaVenture read the December 14, 2020 letter from Robert Parente, P.L.S. as well as the December 16, 2020 review letter from Assistant City Engineer Collins into the record. The letters explained that some of the new lot corner pins that were installed during the survey were not labelled on the plan previously endorsed by the Board on 10-19-20.

It was suggested by Engineering that the plan be revised to include the additional information and to request that the Board re-endorse the plan for recording. (Note: The previous plan with the omissions, dated 10-15-20, was not recorded.) On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence and to endorse the 12-09-20 referenced ANR plan as approval not required under the subdivision control law. Yea: Elder, Fay, LaVenture, Russ and Fenby. Nay: 0. Motion carried.

4. Public Hearings (None)

5. Subdivision Progress Reports

A. Goodale Estates

i) Request for Reduction of Performance Bond (Vote)

Mr. LaVenture read the Dec. 16 letter from Assistant City Engineer Collins RE: Goodale Estates – Bond Reduction into the record. Engineering has reviewed the status of the construction of the roadway and has detailed the remaining work and proposed completion schedule.

Mr. Collins provided a review of the bond status and has determined the cost to complete the remaining work for the subdivision is \$123,000, a reduction of \$82,000. Mr. Fay asked Mr. DiPersio to confirm that the proposed \$123,000 is enough to cover the costs of any necessary restoration should the first course of pavement show signs of deterioration.

City Engineer DiPersio said that the recommended bond includes a contingency for any required repairs. On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence, and approve the reduction of the bond securing the completion of the subdivision to \$123,000.

Yea: Elder, Fay, LaVenture, Russ, Fenby. Motion carried.

ii) **Communication from Solicitor Grossfield - Second Amendment to the Performance Agreement – (Vote)**

Mr. LaVenture read the December 16 email communication from Solicitor Grossfield into the record.

Solicitor Grossfield confirms that the document “Second Amendment to Subdivision Performance Agreement Secured by Surety Bond - Goodale Estates Subdivision” is in proper legal form. Mr. Fay requested verification that the Board extended the time for completion on the subdivision, which was confirmed. (December 31, 2021). On a motion by Mr. Fay, seconded by Mr. Elder, the Board voted to accept and file the correspondence and to grant Chair Fenby the authority to sign the document on the Board’s behalf. Yea: Elder, Fay, LaVenture, Russ, Fenby. Nay: 0. Motion carried.

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

7. Definitive Subdivision Submissions (None)

8. Signs (None)

9. Correspondence (None)

10. Unfinished Business

A. Definitive Subdivision Application - 76 Broad St. 4-Lot Subdivision

Applicant: W.R.E., LLC, 319 Stow Road, Marlborough, MA 01752

Engineer: Hancock Associates, 315 Elm St., Marlborough, MA 01752. Robert DiBenedetto, Representative.

Attorney Sandra Austin, Counsel.

(Note: Submission Date: 09-09-20, **Decision Due: Meeting Prior to January 22, 2021**)

Chair Fenby requested a motion to waive the full reading of the December 16, 2020 correspondence from Hancock Associates Re: Four Lot Subdivision – 76 Broad St. Response to Engineering Division review comments. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to waive the full reading of the 8-page document. Yea: Elder, Fay, LaVenture, Russ, Fenby. Nay: 0. Motion carried.

The letter details several plan modifications, identifies 7 requested waivers, and includes responses to Engineering plan comments. Ms. Fenby requested that the engineers walk the Board through the proposed waivers. Mr. Fay requested that Mr. DiPersio and Mr. DiBenedetto identify which waivers were associated with Board requests, and which are practical considerations of the design. The waivers, he reminded them, must be in the public’s best interest and not inconsistent with the subdivision control law.

Requested Waivers

§A676-12. Streets. B. Alignment (5) [30’ ROW roundings] – Instead of a complete 30’ radius, the proposed roundings end at the abutting properties.

Originally, the plan showed easements to create the required roundings, but the City Engineer indicates that there is no need for the roundings in this instance. This approach is acceptable to Engineering. Infrastructure is not located in this area, and the waiver avoids the need for separate easements to create the roundings.

§A676-12. Street. C. Width. (1) (a) [Min 50’ width] – The minimum width is 49.2 feet at Station 1+75, at the first small bend in the right-of-way roadway.

City Engineer DiPersio explained that due to the property configurations, there is a small “pinch point” where the ROW is slightly less than 50’. The area is approximately 4 square feet on the 70-72 abutter.

While a “land swap” was preferred by Engineering, this approach is acceptable. There will be a negligible reduction in the 50’ROW in a small section.

§A676-12. Street. D. Grade. (3) [Vertical curves] – The grade break at the proposed crosswalk is greater than 1% (from 2% to 4.9%).

This item was discussed with City Engineer Thomas DiPersio, and a waiver from the required vertical curve at this location would allow a flattened cross slope in the sidewalk. This is acceptable to Engineering.

§A676-20. Sidewalks, grass plots, trees. – The proposed sidewalk is shifted away from the granite curbing and reduced to 5.5 feet in width, creating a landscaping strip on either side of the proposed roadway. This cross section was preferred by the Board. Street trees are proposed in the landscaping strip in sections outside of the proposed lots. Street trees are also proposed in the additional right-of-way at the southeastern end of the roadway, to match the required tree count for this length of roadway. This item was discussed with Assistant City Engineer Timothy Collins.

§A676-23. General. A. [Street acceptance] – The proposed roadway deviates from the standard cross-section in Appendix F as described in waiver request **§A676-20**.

This waiver refers again to the preferred grass strip cross-section.

§A676-24. Street and roadway. B. [30’ curb radius] – Instead of a curb radius that matches the required ROW rounding radius of 30’ (per **§A676-12B**), the proposed curb radii are chosen to ensure the proposed sidewalk is outside the abutting properties. The west (#84 Broad) curb radius is 25 feet. The east (#70-72 Broad) curb radius is 22 feet.

The 22’ radius is acceptable to City Engineer Thomas DiPersio.

§A676-28. Trees. A. [Tree location] – Street trees are proposed in the landscaping strip in sections outside of the proposed lots. Street trees are also proposed in the additional right-of-way at the southeastern end of the roadway, to match the required tree count for this length of roadway (24 trees). Two trees are placed within the proposed lots, but not at 40-ft intervals.

The City Engineer finds the alternate tree placement acceptable.

Mr. Fay indicates that all waivers on the cover sheet have been addressed and summarized that most are resulting from the Board’s requests. City Engineer DiPersio and Hancock Engineer DiBenedetto reviewed other minor plan revisions. Mr. Russ asked for additional information on the dispersion of water from the basin. City Engineer DiPersio said that the outflow is dispersed for the length of the level spreader. The configuration will provide for a reduced flow to adjacent property up to a 100-year storm event. The fencing configuration was also discussed. City Engineer DiPersio was OK with the design.

Attorney Sandra Austin was present to discuss the subdivision decision timeline and the timeline for document preparation. She indicates that her client is agreeable to an extension for time on the decision until the mid-February timeframe. She proposes to submit a “request for extension of the vote” as well as a draft decision document and draft covenant prepared for the January 11th meeting.

10. Unfinished Business

C. Working group discussion – Planning Board Rules and Regulations

i) Forms, Fees and Cross-Sections Update Discussion

Mr. LaVenture provided an update to the Board of the working group’s most recent meeting on December 18. He thanked the Engineering Division and Legal Dept. for their work and participation. Mr. LaVenture summarized the meetings discussion points and provided the proposed timeline for the coming months:

January meetings – complete fee schedule update, “bless” new cross-sections, updated forms, review existing Engineering Division Rules & Regs change proposals, and refer all to Legal for review.

February meetings – complete review of Board suggested Rules & Regs change proposals, refer to Legal for review, and advertise for public meeting to share proposed changes.

March meetings – hold one or more public meetings as needed to work through the entire Rules & Regs proposed changes.

Late Mar/early Apr – Vote to approve desired updates to the rules and regulations and follow appropriate procedures for adoption and recording of new regulations.

Fees Schedule Discussion:

Mr. LaVenture lead the discussion of proposed changes to the Planning Board fee structure. The fees were last updated in 1991. Mr. LaVenture described the rationale of the working group’s fee recommendations.

Based on:

- review of the Planning Board fee schedules of multiple MA communities,
- the Bureau of Labor Statistics Consumer Price Index inflation calculator, and
- sample calculations performed by the City Engineer

The following updates are presented for discussion:

- ANR: \$50 filing fee and \$50 for each lot becomes \$100 and \$100
- Preliminary: \$200 filing fee and \$1/linear foot becomes \$400 and \$2/linear foot
- Definitive: \$500 filing fee and \$2/linear foot becomes \$1000 and \$3/linear foot
- Inspection: \$50 filing fee and \$1/linear foot becomes \$100 and \$2/linear foot

Possible additional fees discussed include a bond reduction request fee - \$200, request for completion extension - \$50, scenic roadway request - \$50 and subdivision inspection fee- \$100 + \$2/linear foot of roadway.

Mr. Fay commended the working group for their efforts on the analysis. He commented that he felt the additional fees were valid but thought that they may be on the low side.

Assistant City Solicitor Piques joined the discussion. He commented that M.G.L and supporting case law restricts the amount a locality or local board may charge as a “fee” ...such a fee...should not be designed to raise additional revenue” as well as “a fee may only compensate the governmental entity providing the services for its expenses.” The analysis done by the Board which includes the criteria of comparable community comparisons, Consumer Price Index calculations and Engineering time/expense calculations, provides a good basis for establishing accurate fee structures in Marlborough’s regulations. He would like to do some additional research to see if there are any additional statutory regulations which could further inform fee recommendations.

Chair Fenby returned to the discussion of forms. She feels that the forms are in good draft form but could benefit from making them more user friendly for online access and submission using a pdf fillable format. As a suggestion, this task might be efficiently done utilizing MAPC or another outside entity.

Mailing procedures and costs were also discussed. Mr. Fay favors the use of outside services such as Minuteman Press (or similar) to complete mailings at the applicant’s expense. There was some discussion whether the City needed to be fully responsible, or whether the mailings can be done at the direction of the City. Mr. DiPersio and Mr. Russ confirmed that processes differ from one community to the next. Mr. Russ said that his experience is that the applicant takes the lead in preparing and mailing notices and advertisements. In Marlborough, most of the work is done by the City. While time consuming, the Planning Board Administrator indicated that advertising for preliminary and definitive subdivisions is infrequent. Marlborough typically uses certificates of mailing which have been prepared by the City and mailed by the applicants at their expense.

ii. Assignment of Next Tasks

Mr. LaVenture said that he would propose that the working group meet again prior to the next meeting to review fees and cross-sections in preparation for the next meeting. Mr. DiPersio said that the desired standard pavement widths need to be determined by the Board. Mr. Fay said a list of developments with various pavement widths would be helpful. He would like to visit the developments, park on the streets and get a sense of each variance. Mr. DiPersio will provide these examples for the next meeting.

11. Calendar Updates (None)

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

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and all file items 10 and 12. Yea: Elder, Fay, LaVenture, Russ, Fenby. Nay: 0. Motion carried.

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to adjourn the meeting.
Yea: Elder, Fay, LaVenture, Russ, Fenby. Nay: 0. Motion carried.

Respectfully submitted,



George LaVenture/Clerk

/kih