

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1B

Call to Order

May 24, 2021

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

1. Draft Meeting Minutes

A. May 10, 2021

Mr. LaVenture asked the Board to table consideration of the draft minutes to the next meeting set for June 7, 2021. Dr. Fenby tabled.

2. Chair's Business

- A. Referred from City Council: Proposed Zoning Amendment to Zoning Code, Chapter 650 by adding a new section to create the "Commercial Village Overlay District"
- June 21, 2021, 7:00 pm was selected for the Planning Board's public hearing on the proposed zoning amendment.

3. Approval Not Required

- A. 285 and 297 Concord Road – Applicant Estate of Paul D. May & Joseph F. and Sandra M. May
Deed Reference: Book 19501 Page: 343
Deed Reference: Book 40720 Page: 293
Deed Reference: Book 30947 Page: 443
Surveyor: Hancock Associates (315 Elm Street, Marlborough, MA 01752)

Dan Bremser, Senior Project Manager of Hancock Associates spoke on behalf of his client Joseph May. Mr. Bremser explained Joseph and Sandra May live at 297 Concord Road, and Paul May lived at 285 Concord Road. The main purpose of this ANR is to reconfigure the 285 and 297 Lot lines. This reconfiguration would create a proposed "Parcel A".

Mr. Russ and City Engineer Thomas DiPersio discussed concerns on the wording of a note on the Plan. Mr. DiPersio assured the Board that Engineering would review the language during their review process.

Mr. Bremser explained this ANR plan would result in the descriptions below:

Proposed Lot 3:	Area: 25,616 S.F.	Frontage: 151 ft
Proposed Lot 1:	Area: 38,076 S.F.	Frontage: 154 ft
Proposed Parcel A:	Area: 44,806 S.F.	Frontage: 71.56 ft - Does not meet requirement (not a buildable Lot)

On a Motion by Mr. LaVenture to refer to Engineering, seconded by Mr. Russ. Yea: Elder, Hodge, LaVenture, Russ and Fenby. Nay: 0. Motion carried.

4. Public Hearings (None)

5. Subdivision Progress Reports (None)

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

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7. Definitive Subdivision Submissions (None)

8. Signs (None)

9. Correspondence (None)

10. Unfinished Business

A. Working Group Discussion – Planning Board Rules and Regulations

Mr. LaVenture acknowledged the support from the Engineering and Legal Departments. Specifically Assistant City Engineer Timothy Collins, City Solicitor Jason Piques, City Engineering Thomas DiPersio, and Mr. Russ. All have contributed and continue to contribute tremendously to the Working Group's efforts.

Mr. LaVenture explained on display for the Board are a few pages from the full set of Rules and Regulations with proposed changes. The pages cover A676-10 H & I. Mr. LaVenture provided a description, Per A676-10 (G) an applicant may provide construction and services installation performance guarantees by one, or in part by one and in part by the other, of bonds or surety or covenant. (H) speaks to adjustment of any bond or surety that has been used to guarantee performance. (I) address the release of any performance guarantee after successfully completing construction and services installation.

Mr. LaVenture went over the proposed changes within the document displayed on the next four pages.

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- (b) The developer shall also note on his definitive plan that any and all lots within the subdivision are subject to the restrictions of the covenant.

H. Adjustment of bond or surety. If the value of the work having been completed for construction of the subdivision is equal to or greater than 10% of the surety being held to complete the subdivision, the Developer may request that the ~~The~~ penal sum of any such bond or the amount of any deposit held under Subsection G(1) above may from time to time be reduced by the Planning Board and the obligations of the parties thereto released by said Board in whole or in part to a minimum of 10% of the total costs to complete the required improvements specified in Article V. This 10% shall be held by the City for one year after completion of construction and installation of services or until the streets are accepted by the City, whichever comes first. See Appendix K and Form H for fee structure and application form.

Mr. Hodge addressed concerns on the placement of language, potentially resulting in confusion. Mr. LaVenture decided to review the placement of language at the next Working Group meeting.

Similarly, the penal sum of any such bond or the amount of any deposit held under Subsection G(II) above may be increased by the Planning Board.

Any reduction of or increase hereunder shall be authorized pursuant to a recalculation to be done by the DPW's Engineering Division, of the amount then remaining in the applicable bond or deposit, said recalculation to be done on an annual basis for the costs of the work within a subdivision remaining to be completed. Said costs shall be the costs necessary to complete the required improvements as determined by the ~~DPE's~~ DPW - Engineering Division at the time of each such recalculation.

Should the Planning Board determine that the surety amount being held to complete the subdivision should change, the Planning Board shall notify the City Treasurer and the Developer of their decision. The Planning Board shall notify the surety of the Planning Board's actions and request an acknowledgement of the change in the amount of surety, if applicable.
~~(amended 5-1-15)~~

- H^{1/4} Deeding of developer's legal interests to City. Immediately upon providing a bond or other security to construct an approved definitive subdivision plan, the developer shall deed to the City the subdivision road(s) as well as all municipal utility easements, if any. If any modifications to the approved definitive subdivision plan result in a re-location of any municipal utility, the developer shall, immediately upon installation of the re-located municipal utility, deed to the ~~City~~ City the easement corresponding to the re-located municipal utility. The developer is also required to provide the City with a certificate of liability insurance, naming the City as an additional insured relative to the subdivision road(s) as well as all municipal utility easements, if any, to be deeded to the City. ~~(amended 5-1-15)~~

- H^{1/2}. Required remedial action after lapse of time. If more than two years has elapsed from the time that the developer has installed the base course of the subdivision road pavement to the time that the developer has ~~scheduled to pave~~ installed the top course., the planning Board may require that the developer take such remedial action as may be recommended to the Board by the DPW's Engineering Division, including but not limited to patching and crack sealing the pavement, or in more acute situations, reclaiming and ~~the~~ reconstructing the subdivision road. The cost of any such remedial action would be added to the annual recalculation, to be done by the DPW's

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Engineering Division pursuant to §A676- 10.0. If a developer fails to take remedial action required by the Board, the Board is authorized to rescind or modify the definitive subdivision approval. (~~amended 5-1-15~~)

- I. Release of performance guarantee upon completion of construction.
- (1) Upon the completion of all improvements required under Article V, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the applicant may send by registered mail, two copies to the City Clerk and one copy each to the DPW Commissioner, the City Engineer, the Board of Health, and the City Solicitor, a written statement in duplicate that the said construction ~~or~~ and installation of services in connection with which such bond, deposit or covenant has been given has been completed in accordance with the requirements contained under Article V; ~~such~~ Such statement ~~to~~ must contain the address of the applicant; ~~and~~ the City Clerk shall forthwith furnish a copy of said statement to the Planning Board.

Within 15 days of receipt of such statement, the following shall respond regarding compliance with the Board's Subdivision Rules and Regulations in place at the time the Board approved the definitive subdivision plan and may also recommend the termination of the Maintenance Period:

- Ø) The Commissioner of Public Works shall respond as to the construction of all ways, the installation of water, sewer, drainage utilities, and sidewalks, installation of monuments, street signs, lights, gutters, and curbs, required grading and lot drainage, and planting and whether the condition of the subdivision road(s) and subdivision infrastructure are acceptable.
- Ø) The City Engineer shall respond as to the construction of the Stormwater Management facilities.
- Ø) The Board of Health shall respond as to the installation of sewage disposal facilities, if applicable.
- Ø) The City Solicitor shall respond as to receipt of executed deeds for the roadway layout and municipal easements and as to the Developer's Certificate of Title.

(2) 2) After receiving favorable written statements of compliance from the DPW Commissioner, the City Engineer, the Board of Health and the City Solicitor, and, if the Planning Board determines that said construction and installation of services has been satisfactorily completed and the Maintenance Period may be terminated, it shall notify the:

- Ø) Developer that they should petition the City Council for Acceptance of the streets and the associated municipal easements.
- Ø) City Council, when requested, regarding its recommendation for Acceptance of the subdivision streets and the associated municipal easements including in such recommendation the expiration date of the developer's responsibility for maintenance of said way or portion thereof and that said way should be laid out as a public way with its maintenance the responsibility of the City.
- Ø) City Treasurer, Surety, the Developer, and the City Clerk~~If the Planning Board determines that said construction or installation has been completed, it shall notify the City Treasurer~~ in writing that it releases the interest of the City in such bond or deposit and that such bond or

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deposit shall be returned to the person or persons who furnished the same, or in the case of covenant, it shall issue a written release of the covenant suitable for recording.

~~However, 10% of the total costs to complete the required improvements specified in Article V shall be held by the City for one year after completion of construction or until the streets are accepted by the City, whichever comes first. The total costs shall be those costs necessary to complete the required improvements at the time release is applied for.~~

- ~~(2) — Release of performance guarantee. The Planning Board shall request the Commissioner of Public Works, approximately 60 days before the expiration of the year, to make an inspection of said street or way or portion thereof to determine whether or not defects have developed therein, and to make his recommendation to the Board as to whether or not it should recommend same to the City Council for the laying out of said street or way or portion thereof as a public way. Such recommendation may be in the affirmative if the Commissioner has determined that:~~

- ~~a) — the subdivision road(s) and subdivision infrastructure were built in full compliance with the Board's Subdivision Rules and Regulations in place at the time the Board approved the definitive subdivision plan; and~~
- ~~b) — the condition of the subdivision road(s) and subdivision infrastructure was acceptable at the end of the one year maintenance period.~~

~~If the recommendation is in the affirmative, the Board shall so recommend to the City Council forthwith, including in such recommendation, notification that the year for which the developer is responsible for the maintenance of said way or portion thereof will expire on a certain date and said way should be laid out as a public way and the maintenance of same to become the responsibility of the City. (amended 5-1-15)~~

- ~~(3) — Upon the expiration of the year for which the developer is responsible for maintenance of said way, and said developer has complied with all the requirements of the Planning Board Rules and Regulations in accordance with an inspection report of said way from the Commissioner of Public Works, and the Board has recommended to the City Council that said way should be laid out as a public way, any monies held by said Board for the maintenance of said way shall be returned forthwith to the developer.~~
- ~~(4) — Prior to releasing the City's interest in a performance bond or deposit or covenant, the Planning Board shall receive from the applicant the following written statements of approval or 15 days shall elapse after the request for said approval without action:~~
- ~~(a) — From the Commissioner of Public Works as to construction of all ways and sidewalks, installation of monuments, street signs, lights, gutters, and curbs, required grading and drainage, and planting and seeding.~~
- ~~(b) — From the Board of Health as to the installation of sewage disposal facilities, if applicable, and adequate lot drainage.~~
- ~~(c) — From the Commissioner of Public Works as to construction and installation of water and sewer facilities.~~
- ~~(5) — If the Planning Board determines that said construction or and installation of services has not been completed, or does not receive the above written statements of approval compliance recommending approval, or the deeds for all land and easements required have not been given to~~

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the City, it shall specify to the applicant, in writing, by registered mail, the details wherein said construction and installation fail to comply with requirements contained ~~under Article V~~ within these Rules and Regulations.

(4) In the event~~Upon failure of~~ the Planning Board does not make a determination regarding the status of construction and installation of services to act on such application within 45 days after the receipt of the application by the City Clerk of the applicant's written statement, all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned and any such covenant shall become void. In the event that said forty-five-day period expires without such specification or without the release and return of the deposit or release of the covenant as aforesaid, the City Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

- J. Certificate of approval. The action of the Planning Board in respect to such plan shall be by vote, copies of which shall be certified and filed with the City Clerk and sent by delivery or registered mail to the applicant. If the Planning Board modifies or disapproves such plan, it shall state in its vote the reasons for its action and shall rescind such disapproval when the plan has been amended to conform to the rules, regulations and recommendations of the Planning Board. Final approval, if granted, shall be subject to the construction specifications contained herein and shall be endorsed on the original drawing of the definitive plan by the signatures of a majority of the Planning Board (or by the signature of the person officially authorized by the Planning Board) but not until the statutory twenty-day appeal period has elapsed following the filing of the certificate of the action of the Planning Board with the City Clerk and said Clerk has notified the Planning Board that no appeal has been filed. After the definitive plan has been approved and endorsed, the Planning Board shall return the original to the applicant.
- (1) The Planning Board may agree to an extension of the minimum time normally required for action following submission of a definitive plan and action thereon, upon the written request of the applicant.
 - (2) Approval of the definitive plan does not constitute the laying out or acceptance by the City of street(s) within a subdivision.
- K. Decision. After the public hearing, the Board in due course will approve, modify and approve, or disapprove the definitive subdivision plan submitted. Criteria for action by the Board shall be the following:
- (1) Completeness and technical adequacy of all submissions;
 - (2) Determination that development at this location does not entail unwarranted hazard to safety, health and convenience of future residents of the development or of others because of possible natural disasters, traffic hazard, or other environmental degradation;
 - (3) Conformity with the requirements of Article IV;
 - (4) Determination and selection of preferred plan, based upon alternatives presented in the comprehensive impact analysis (where submitted), that the subdivision will not cause substantial and irreversible damage to the environment, which damage could be avoided or ameliorated through an alternative development plan; that all adverse impacts upon water, sewer and street systems will be adequately mitigated; and that recreation, open space and scenic values are adequately provided for;

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With no questions from the Board, Mr. LaVenture discussed street acceptance.

With no language to display Mr. LaVenture provided a high-level briefing of what the Working Group has been discussing. He explained their goal is two-fold, keeping an applicant engaged in the street acceptance process and protect the city in the rare event that a developer should, for whatever reason, be unavailable. Based on review of model subdivision regulations developed by the Pioneer Valley Planning Commission supporting Agawam, Belchertown, Easthampton, Ludlow, South Hadley, and Ware, and discussions Assistant City Solicitor Mr. Piques has had with the town of Taunton planners, the Working Group is discussing adding a new section L to A676-10 called Street Acceptance.

Mr. LaVenture explained the idea is to accomplish the following:

- require a Street Acceptance Deposit in the form of bonds/cash/securities or a buildable lot as part of the initial Definitive Plan submission [however it could be done prior to endorsement if that makes more sense].
- require the developer petition the City Council to accept the ways as public,
- require the Planning Board respond to the Council's request for its' recommendation, and
- require the developer to then request the release of their deposit to start that process

This will help protect the City in the event a developer should fail/fold or walk away from a project without conveying the land and easements required under A676-10 H-1/4.

Mr. LaVenture clarified the bond and covenant described below are separate from the performance guarantee sections of G, H and I, which are solely to ensure that the construction and the installation of services have been adequately and satisfactorily completed. Once that has been determined those bonds and covenants are released.

1. 100% Bond/cash or security deposit

The applicant would be required to submit a Street Acceptance Deposit of some amount tied to the value of a buildable lot in cash with their Definitive Plan submission.

Since all subdivisions are different, the Working Group is considering setting a minimum deposit amount but allowing the Planning Board to raise it depending on the circumstance.

2. 100% Covenant (Presumably called Supplemental Covenant)

Here the Planning Board would stipulate that one buildable lot will be held as the Street Acceptance Deposit.

3. Combination of Bond and Covenant

Requirements would be worked out on a case by case basis. This is an unlikely method.

Release of the deposit or last remaining buildable lot would occur after the applicant has petitioned the City Council for street acceptance, the Planning Board has responded to a City Council request regarding street acceptance, and the applicant has petitioned, in writing, the Board for release of the deposit or buildable lot.

With no questions from the Board, Mr. LaVenture provided an update, as of the last Working Group meeting on the 19th, the City Engineer Mr. DiPersio hadn't received feedback from any of the city departments regarding the proposed changes. Mr. LaVenture said City Solicitor Mr. Piques indicated he had briefly communicated with Meredith Harris at MEDC and that there is no timeline for a MAPC response yet.

The Board set a tentative date of September 13, 2021, for their public hearing to present the proposed changes to the Planning Board's Rules and Regulations.

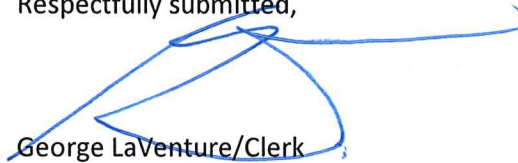
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11. Calendar Updates (None)

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

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

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "George LaVenture", written over the printed name.

George LaVenture/Clerk

/kmm