

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

August 27, 2018

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 and George LaVenture. Also in attendance were City Engineer, Thomas DiPersio, Assistant City Solicitor, Cynthia Panagore Griffin, and Planning Board Administrator, Krista Holmi.

1. Meeting Minutes

A. July 23, 2018

On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to accept and file the minutes of July 23, 2018. Motion carried.

2. Chair's Business

- A. With regret, Chairperson Fenby informed the Board that long-time member, Colleen Hughes, has decided to retire from her position on the Board. Colleen has contributed much during her 23 years on the Planning Board, and her commitment and dedication to serving the City will be sorely missed. Barbara extended the Board's well wishes to Colleen in her future endeavors and thanked her for her many years of exemplary service. Ms. Fenby requested that George LaVenture serve as Clerk for the meeting. Ms. Hughes's retirement creates a vacancy on the Board. Interested parties should reach out to the Board and Mayor's Office.
- B. Set Public Hearing Date: Council Order 18-1007337, Proposed Zoning Amendment Section 650, §7, §17, new §39 & §41 relating to the Neighborhood Business District (Lincoln St.) **The public hearing was set for Monday, September 24, 2018 at 7:00 p.m.**
- C. Set Public Hearing Date: Council Order 18-1007338, Proposed Zoning Amendment Section 650, new §40 relating to Large Scale Ground Mounted Solar Photovoltaic Installation Overlay District. **The public hearing was set for Monday, September 24, 2018 at 7:10 p.m.**

3. Approval Not Required (None)

4. Public Hearings

- A. Council Order 18-1007287, Proposed Zoning Amendment Section 650-5, entitled "Definitions; word usage" Ancillary Residential Community, Section 650-17, entitled "Table of Uses" and addition to Section 650-22 Subsection C (14) Ancillary Residential Community requirements. Proponent, Attorney Arthur Bergeron, Mirick O'Connell.

Chairperson Fenby opened the hearing. Mr. LaVenture read the public hearing legal 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:

Mr. Bergeron of Mirick O'Connell introduced the proposed zoning amendment. Mr. Bergeron explained that the intent of the zoning amendment was to allow the addition of a single multifamily building as an ancillary community either as part of a retirement community (in a Retirement Community Overlay District) or located on a lot adjacent to a retirement community. Specifically, his presentation is addressing his client's desire to add an ancillary community to the 2-acre parcel adjacent to the Crane Meadow development on Williams St.

Attorney Bergeron offered that members of the Crane Meadow Condominium Community may reach a stage in their lives when home ownership may not be desired. The option of apartment-style living in an adjacent parcel may be preferred by some residents seeking amenities such as underground parking and elevator service while remaining near their existing community setting.

Mr. Bergeron explained that ancillary residential communities were once allowed within the Retirement Community Overlay Districts, but at some point, that option was eliminated from the ordinance.

Unfortunately, the City's service (E360), failed to incorporate that change into the City's code. Plans to create an ancillary residential community adjacent to Crane Meadow were progressing when the zoning issue was discovered. This discovery necessitated the zoning amendment proposed this evening, which restores the ancillary use. Attorney Bergeron went on to explain that the amendment incorporates controls in the special permit process. The proposed special permit application to build the ancillary residential community must contain written consent of the organization governing the adjacent retirement community. Attorney Bergeron praised the Crane Meadow Association for their participation and majority support of the proposal, stating that approximately 70% of the 91-unit ownership expressed support.

Ms. Fenby declared that portion of the public hearing closed.

Speaking in Favor of the Amendment:

Norman Zinman of 52 Healthwood Dr. expressed his support for the zoning amendment. He has served on the Board for the past 15 years. In a non-binding poll of residents, Mr. Zinman stated that 76% of polled residents favored the ancillary use. He feels that the residential use is preferred to any other use allowed by right in the limited industrial zone.

Janet Mayor of 77 Deerfield Run spoke in favor of the amendment. She also stated that residential use is preferred to a potential limited industrial use. She praised the Board for keeping residents apprised of this project, while acknowledging that some buildings are more impacted than others.

George Clymas of 58 Heatherwood Dr. has lived in the Crane Meadow development since 2002. He is a past president of the Association. He echoed that this ancillary proposal has the greatest advantage over other uses on the adjacent parcel.

Charles Pross of 72 Deerfield Run similarly expressed his approval of the proposed amendment stating that the residential use was preferred over any limited industrial use.

Speaking in Opposition to the Amendment:

Charles Trombetta of 42 Whispering Brook Rd. spoke in opposition to the amendment. He disagreed with Attorney Bergeron's characterization of the community meeting as cordial and overwhelmingly in favor of the proposal. He stated that many in opposition left the meeting in frustration, because they were not allowed to speak on the matter. Mr. Trombetta opposes this zoning amendment arguing that an additional amendment complicates an already complicated zoning ordinance. Regulations seem to change with each new development opportunity, making it much harder to understand and recognize impacts throughout the City. He stated that a City Planner would make the regulations much more cohesive. He expressed that zoning amendments should be formulated by the City, not by the developers.

Gerry Turcotte of 47 Whispering Brook Rd. informed the Board that his property sits only 30 feet from the property line of the abutting parcel proposed for this multifamily apartment building. He stated there are 19 abutters to this proposed large building who remain opposed to this amendment. Mr. Turcotte does not feel the neighborhood is suited for this type of development, noting that the streets in the area are narrow and lack sidewalks. With no additional persons wishing to be heard, Chairperson Fenby declared this portion of the public hearing closed.

Questions and Comments from the Planning Board:

Q: Mr. Fay, noted that the Board has seen other recent proposed modifications to the Retirement Community Overlay District. He questioned how this amendment differed from the previous proposed amendments. Attorney Bergeron stated that the ancillary use proposed in this amendment allows for the single multifamily building incorporated as part of a retirement community or located on a lot adjacent to the retirement community. He noted that the Crowley Drive proposal applies to a property that is "one parcel removed" from the existing retirement community development (not adjacent or contiguous); therefore, this proposed amendment would not apply. He could not offer any additional information regarding similarities or differences. Q: Mr. Fay expressed his opposition to the language under Section 3 (b) ... *shall be designed in a manner satisfactory to the City Council*. Mr. Fay is consistent in his belief that acceptable design criteria should be defined as explicitly as possible. While he expressed confidence in a thorough review by many of the "veteran councilors", leaving the subjective criteria to a Council with a future uncertain and changeable makeup is not ideal. Mr. Bergeron stated that the section only pertains to the street-facing portion of the building. Q: Mr. Fay felt that section (i) could be written more clearly. Mr. Bergeron suggested that his associate, Brian Falk., review the language for clarity. Mr. Fay asked how many parcels in the City would be impacted by the proposal. Mr. Bergeron stated that it would be limited to two.

On a motion by Mr. Fay and seconded by Mr. LaVenture, the Board voted to leave the public hearing open. Motion carried.

- B. Council Order 18-1007311, Proposed Zoning Amendment Section 650-5, entitled "Definitions; word usage" Coffee Roastery and Section 650-17, entitled "Table of Uses".

Chairperson Fenby opened the hearing at 7:40 p.m. Mr. LaVenture read the public hearing legal 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 Council President Clancy was present to provide an overview of the proposed amendment. Mr. Clancy explained that the City and the Marlborough Economic Development Corporation have worked to attract downtown businesses. The City has interest from a business wishing to establish a Coffee Roastery in the downtown area. Since coffee roasting is not currently an allowed use in the Marlborough Village District, the proposed zoning amendment establishes zoning regulations and emission standards for roasting operations. Councilor Clancy read Section 650-5, entitled "Definitions; word usage", COFFEE ROASTERY. Councilor Clancy indicated that the Urban Affairs Committee has reviewed the Section 650-17, entitled "Table of Uses" for recommendation of zones allowed by right and zones allowed by special permit. Modifications were suggested to remove siting in the Commercial Automotive zone and allow by special permit in the Business, Limited Industrial, Industrial and Marlborough Village District.

Speaking in Favor of the Amendment:

No individual spoke in favor of the amendment.

Speaking in Opposition to the Amendment:

No person spoke in opposition to the amendment.

Questions and Comments from the Planning Board:

There were no questions from the Board.

Chairperson Fenby declared the public hearing closed.

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, Council Order 18-

5. Pending Subdivision Plans: Updates and Discussion (Engineer's Report)

- A. City Engineer DiPersio provided the following updates – Cider Mill: This subdivision is currently in the maintenance period (ending 1-22-19). Engineering/Legal is proactively working with the developer who is progressing with the necessary documentation to ensure a timely street acceptance. Mauro Farms: Legal Dept. has reviewed plans and deeds prepared for acceptance. Mauro Farms must still request the Certificate of Compliance from the Conservation Commission.
- B. Slocumb Lane (Blackhorse Farms) - Mr. DiPersio informed the Board that with Council Order 18-1007285B, the City Council voted to accept Slocumb Lane as a Public Way. (Mayor Vigeant approved the Council order on July 30, 2018). The developer has requested that the bond be reduced to zero. (Vote anticipated at the 09-10-18 Planning Board meeting.)
- C. Howe's Landing Subdivision - Mr. DiPersio informed the Board that Howe's Landing is nearing completion and the developer has requested that the subdivision bond be reduced to a maintenance level for a period of one year. For the next meeting, Engineering will prepare a recommendation letter for the Board. On a motion by Mr. Fay and seconded by Mr. LaVenture, the Board voted to accept and file all related documents and refer the matter to Engineering for recommendation. Motion carried.
- D. Walker Brook Estates – The developer has requested a Certificate of Compliance from the Conservation Commission. The matter will appear on the Commissions September 6, 2018 agenda. Once the Conservation Commission makes its determination, Engineering will make its recommendation to the Board for bond reduction and acceptance.
- E. Mr. LaVenture read the July 26, 2018 letter from Assistant City Solicitor, Cynthia Panagore Griffin, into the record. The letter provides a determination of legal interests and easement rights of Marlborough Hub, LLC as well as the proposed development's abutters. On a motion by Mr. Fay and seconded by Mr. LaVenture, the Board voted to accept and file the correspondence. Motion carried.

Following the reading, Ms. Panagore Griffin asked for permission to address the Board, which was granted by Chairperson Fenby. Ms. Panagore Griffin indicated that during the Legal Department's title research, additional questions arose. Planning Board rules and regulations state that all owners with fee interests in the development be included on the subdivision application. Case law from the Town of Somerset concluded that the Planning Board cannot waive owners' rights, that the subdivision approval was a nullity because all owners were not joined on the application, and that all owners must be joined on a covenant. Mr. Fay questioned, "Must all owners must provide consent at each phase of the project?" Ms. Panagore Griffin suggested that the Planning Board may wish to ask the attorneys for Marlborough Hub, LLC their intentions regarding the owners, and while the Planning Board may not waive its requirement that all owners be joined on the application for subdivision approval, one option may be to consider whether it would accept written consent of the owners. Mr. DiPersio asked the following: If an owner has the right to develop the roadway (as has been determined in the Legal Dept. letter), how is this ownership issue factored into consideration? Ms. Panagore Griffin explained that there are two separate issues at hand 1) Land Use and 2) Subdivision Control Law. Mr. Falk, the applicant's representative, made a request to respond. He indicated that he believes a memo on this very issue exists that may offer some insight into ownership rights. He will review their file and share his findings.

- F. Marlborough Hub – Request for Extension of Decision. Mr. LaVenture read Attorney Bergeron’s August 20, 2018 letter, RE: Request for Extension- Marlborough Hub, into the record.

On a motion by Mr. Fay and seconded by Mr. Hodge, the Board voted to accept, file and grant the requested extension for discussion on the pending application until September 10, 2018, and agreed to the request for the extension of time for a decision on the definitive subdivision submission until October 15, 2018. Motion carried.

6. Preliminary/Open Space/Limited Development Subdivisions

A. 72 Hager St. (Open Space Special Permit continued discussion.)

Applicant representative, Peter Bemis of Engineering Design Consultants, was present for the discussion. Mr. Bemis showed the Board a new plan to meet the 5-acre open space development requirement. In the new plan, the 5-acre development includes an easement from an abutting neighbor. The Board discussed whether inclusion of the easement (in lieu of a fee interest in the additional land) satisfies the 5-acre requirement. Mr. Bemis said that if a fee interest was necessary, an ANR plan would be submitted to incorporate the additional land in the open space parcel. Mr. Bemis would like to expedite the process and suggested that once the Board makes its determination (easement or fee interest), it would be preferable to have the Board conditionally approve the special permit. Mr. DiPersio requested that the Board define what information the Board needs to approve the special permit. The Board discussed needing a legal determination on the easement, and they also discussed the applicant’s progress on the Conservation Restriction for the open space. Mr. DiPersio stated that the Conservation Restriction does not need to be fully defined at this point in the process, and the Board may make its determination on the merits of the special permit request.

7. Definitive Subdivision Submission (Discussion - Note: Moved from 8-27-18 Agenda item 6B to 7A in minutes)

A. 215 Simarano Dr. (Partial review regarding subsurface stormwater treatment)

Mr. LaVenture read the City Engineer’s 8-22-18 letter Re: Definitive Subdivision Plan Submittal – 215 Simarano Drive into the record. Mr. DiPersio indicates that the subject property could be subdivided into two lots without a roadway, and that the current design includes subsurface stormwater systems for the roadway drainage (which is contrary to DPW policy that all roadway drainage systems utilize surface detention basins). For these reasons, Engineering recommends that the proposed roadway remain a private way. Mr. DiPersio states that this submission is procedural to enact a zoning freeze on the parcel. Since any eventual construction on the sites is subject to Site Plan Review, Engineering will leave its detailed review until such time. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence. Motion carried. Mr. LaVenture questioned whether the Board had any authority to deny the application for the subdivision since the applicant had no intention of completing the subdivision in the timeframe prescribed under subdivision control law. Assistant City Solicitor Panagore Griffin stated that Board may modify, amend or rescind a definitive subdivision approval but the zoning freeze would remain, and the Planning Board does not have the authority to deny the approval simply because the submission was made to provide a zoning freeze. Chairperson Fenby stated that the discussion would be continued in the next meeting.

8. Signs

- A. Continuation 175 Lakeside Avenue, Thomas Energy – Application for Sign Appeal/Variance to Planning Board. Mr. LaVenture read the August 22, 2018 email from Attorney Austin indicating that her client, Thomas Energy, was withdrawing their request for a variance at its gas station at 175 Lakeside. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence. Motion carried.

9. Informal Discussion (None)

10. Unfinished Business

- A. Proposed Zoning Amendment 650 § 5B & 650 § 17 Ancillary Auto Sales, Council Order 18-1007224A, Proponent Brian Falk, Mirick O'Connell. Mr. Falk addressed the Board and requested that the Ancillary Auto Sales matter be continued until the next meeting, September 10. Mirick O'Connell is still working on the maps requested by the Board. On a motion by Mr. Fay and seconded by Mr. Hodge, the Board voted to continue the matter until September 10, 2018. Motion carried.

11. Correspondence

- A. Letters in opposition from Ernest Beer, 42 Birchwood Dr. and Pamela Strauss, 50 Commonwealth Ave., RE: Proposed Zoning Amendment, Section 650-8, Retirement Community Overlay District (Marlborough Airport)

12. Public Notices of other Cities & Towns

- A. Town of Hudson Planning Board – 1 Notice

On a motion by Mr. Fay, seconded by Mr. Hodge, the Board voted to accept and file items 11A and 12A and to adjourn the meeting of the Planning Board. Motion carried.

/kih

Respectfully submitted,



George LaVenture
Acting Clerk