

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

1A

**Call to Order**

**September 24, 2018**

The Meeting of the Marlborough Planning Board was called to order at 7:00 pm in Memorial Hall, 3<sup>rd</sup> Floor City Hall, 140 Main Street, Marlborough, MA. Members present: Barbara Fenby, Phil Hodge, Sean Fay, George LaVenture and Chris Russ. Also in attendance were City Engineer, Thomas DiPersio, City Solicitor, Don Rider and Planning Board Administrator, Krista Holmi.

**1. Meeting Minutes**

**A. September 10, 2018**

On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to accept and file the minutes of September 10, 2018; Hodge and Russ abstained. Motion carried.

**2. Chair's Business**

**A. Planning Board Membership Update**

The Board is seeking additional members following Mr. Gallagher's announcement that he will be moving from the area.

**B. Tracking Spreadsheet**

Due to the evening's busy schedule, Chairperson Fenby requested that this matter be addressed at another time. Motion to skip item by Sean Fay, second by Mr. LaVenture, Motion carried.

**3. Approval Not Required (None)**

**4. Public Hearings (New)**

- A. Council Order 18-1007337, Proposed Zoning Amendment Section 650, §7, §17, new §39 & §41 relating to the Neighborhood Business District (Lincoln St.)** Sponsors -Councilors Ossing (speaking) and Irish with presentation by Cynthia Wall of the Metropolitan Area Planning Council (MAPC). Ms. 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:**

Councilor Ossing of 43 Varley Rd. opened the presentation explaining that the proposed zoning amendment emerged from joint efforts of the French Hill neighborhood, the Marlborough Economic Development Corporation, MAPC and the City of Marlborough. The zoning amendment provides a framework for the reshaping and revitalization of the French Hill area. The current business district offset resulted in multiple parcels being bisected with different zoning classifications. Under the new Neighborhood Business District, parcels will be fully included within the district. Urban affairs is preparing recommendations for the table of uses. The proposed zoning amendment will enable comprehensive development by special permit. Cynthia Wall, Principal Planner at MAPC, joined the meeting via Skype. Ms. Wall described the City's project goal to ensure the health and vitality of the French Hill Neighborhood. With feedback from the working group, MAPC drafted zoning to achieve the vision – *Create a lively, active Lincoln Street business area that serves the French Hill Neighborhood*. The new proposed zoning creates a new Neighborhood Business Zone (NB) for Lincoln St. All parcels currently zoned business are proposed for the NB zone. Zoning covers the entire lot not just the Lincoln St. frontage. New zoning allows for artist studios, brew pubs and 2-family homes. Not permitted: drive-thrus and auto service facilities. Working group concerns included the former IGA, Armory and Johnson sites. The group supported mixed use and infrastructure improvements (crosswalks, decorative lighting, wayfinding) and connections and uses emphasizing the rail trail.

**Speaking in Favor of the Amendment:**

Arthur Bergeron, 27 Prospect St., spoke in favor of the proposed zoning amendment. As a French Hill neighbor, he is excited at the prospect of redevelopment in the area. If anything, he felt that the density could be increased at the IGA and Johnson-Claflin properties. Ms. Wall explained that densities were designed to fit into the existing neighborhood. Chairperson Fenby declared that portion of the hearing closed.

**Speaking in Opposition to the Amendment:**

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

**Questions and Comments from the Planning Board:**

Mr. Fay commented that he thought the Johnson-Claflin property was the perfect place for a downtown area hotel. Mr. DiPersio raised a concern about the boundaries. Based on Engineering's review, some parcels could be left with inconsistent zoning. (or inadvertently excluded from the new zone.) Councilor Ossing thought that the included parcels were reviewed closely, but he suggested Engineering share the specifics of the identified issues after the meeting. Mr. LaVenture sought clarification of some of the height and setback requirements. Ms. Wall addressed some of the amendment's language. The 52' maximum height equates to about 4 stories. There is a minimum height for the business district of 2.5 stories. Minimum rear-yard setbacks vary by the height of the structure, ranging from 15' to 25'.

**Chairperson Fenby requested a motion to move item 5B up in the agenda. Motion by Sean Fay and seconded by Mr. LaVenture to move item 5B up. Motion carried.**

**5. Subdivision Progress Reports (Updates and Discussion)**

- B. Attorney Galvani provided the Board with two updated documents: i) Extension of Performance Secured by Tripartite Agreement and ii) 4<sup>th</sup> Revision Performance Secured by Tripartite Agreement. The Board signed the updated agreements which reduce the bond securing the Howe's Landing subdivision from \$234,000 to a (1) year maintenance bond of \$70,000 expiring September 13, 2019. Attorney Galvani will provide proof of recording to the Board no later than October 9, 2018.

**4. Public Hearings (New)**

- B. Council Order 18-1007338, Proposed Zoning Amendment Section 650, new §40 relating to Large Scale Ground Mounted Solar Photovoltaic Installation Overlay District. Sponsor, Councilor Doucette.

Ms. 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:**

Councilor Doucette opened the presentation describing the amendment which allows for the installation of free-standing solar panels in the City of Marlborough. The proposed zoning amendment creates an overlay district with As-of-Right Siting, subject to site plan review. The overlay district consists of various parcels, but the parcel planned for the installation is Assessor's Map 109, Parcel 1. Various additional parcels in the district are state owned and city owned.

**Speaking in Favor of the Amendment:**

Priscilla Ryder, Marlborough Conservation Officer, spoke in favor of the proposed zoning amendment. This amendment is the first to allow the installation of ground mounted solar panels in the City. She is in favor of the overlay district as it encourages the use of renewable energy sources in the City. Mayor Vigeant also spoke in favor of the proposed amendment. In addition to green energy production, there is an opportunity for an ancillary benefit allowing for the permanent preservation of the farm. Chair Fenby closed that portion of the hearing.

**Speaking in Opposition to the Amendment:**

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

#### **Questions and Comments from Board Members:**

**Q:** Board member Russ asked how the parcels were chosen for inclusion in the overlay district. **A:** Ms. Ryder explained that there is one primary parcel proposed for the installation. Additional parcels were added, but she was not concerned that the installation would encompass the entire district. **Q:** Mr. Russ asked about the proposed size of the installation. **A:** Councilor Doucette said that the ordinance is designed for installations greater than 250 Kw. He was not certain how that equated to physical size. Mr. Fay explained that when the Board evaluates proposed zoning amendments, it tries to apply consistency to its review process, i.e. What is the benefit to the City? How will the proposed amendment affect the existing neighborhood? Does it fit in? When he thinks of solar farms, he visualizes a vacant piece of land adjoining a highway. He wasn't certain that this was a good fit for the neighborhood.

To assist in the visualization of the proposed district, the area was displayed on the electronic screen. Mr. Fay said that viewing the area on the screen was much clearer than interpreting site location using the parcel map provided with the proposed amendment. He stated that the overlay district is not where he thought it was when he reviewed the paper map. **Q:** The Board asked who would determine when the installation would be decommissioned. **A:** Councilor Doucette indicated that the owner would determine the installation's life span. The proposed site is currently wooded. Mr. Russ questioned whether alternate open sites were considered for the installation. **A:** Councilor Doucette said "no" since the proposal initiated with the ownership of one of the proposed district parcels. **Q:** Mr. LaVenture stated that the burden is on the proponent to convince the Board of the amendment's value to the City. He is still questioning how the amendment benefits the public's health, wealth and safety. **A:** Mr. Doucette explained that there is a benefit to locally sourced, renewable power. He explained that the facility would generate net metering credits that could be sold in Marlborough.

#### **4. Public Hearings (Continued)**

- C.** Continued - 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. Brian Falk of Mirick O'Connell was in attendance along with Steve Yurewicz, a project team member of the proposed ancillary residential community on Williams Street. Mr. Falk summarized that the proposed amendment allows for one ancillary residential community (up to 30 units) on an adjacent parcel to the Villages at Crane Meadow. Mr. Falk explained that a "Memorandum of Agreement" (MOA) had been reached with the Villages for the purchase of a sewer easement connecting both properties. The sewer would tie into the city's sewer system. Mr. Falk explained that the connection will provide additional flow which will be beneficial to the Villages. Mr. Fay remains concerned about the potential unintended consequences of this zoning amendment in other parts of the city, particularly the airport property that was recently proposed for inclusion in the Retirement Community Overlay District. Mr. Bergeron said that that amendment has not passed, but he suggested that the Board's recommendation could be written to exclude the airport property. Mr. LaVenture asked for clarification on the definition of an adjacent parcel. **Q:** Could a parcel that is adjacent to an adjacent parcel be included? **A:** Mr. Falk explained "NO". The ancillary retirement community must be built on an area that was part of the original Retirement Community Overlay District or adjacent to the original district. **Q:** Mr. Russ asked the dimensions of the lot sizes. **A:** Mr. Falk explained that lot size is determined by the underlying zone.

The Board took the following action regarding the above-referenced Council order:

On a motion by Mr. Fay and seconded by Mr. LaVenture, the Board voted to make a favorable recommendation to the City Council on the proposed zoning amendment, provided that the definition of adjacent parcel be clarified to include specific language that the adjacent parcel must be within a Retirement Community Overlay District and that ancillary multifamily developments be excluded from any parcel east of Broadmeadow Road. Chairperson Fenby opposed. Motion carried. While the Board's majority felt that an ancillary multifamily development did not unduly burden abutters on the proponent's parcel (adjacent to the Villages at Crane Meadow), Chairperson Fenby's negative vote reflected her agreement with the expressed opposition to this zoning amendment by the most impacted residents.

#### 4. Public Hearings (Continued)

D. Continued - Council Order 18-1007224A Proposed Zoning Amendment 650 § 5B & 650 § 17 Ancillary Auto Sales, Proponent Brian Falk, Mirick O'Connell and Jeff Batta, Owner Marlboro Nissan.

Mr. LaVenture began by offering this question - How does the proposal benefit the public health, wealth or safety in the City? He added- On the surface, this proposal is designed for the sole benefit of the proponent. Mr. Falk replied - Allowing a successful business to expand in Marlborough provides an economic development benefit to the City. Mr. Batta's business is locked in without the ability to expand. The zoning amendment revisions that were introduced by Mr. Falk limit the city-wide impact, which was a concern expressed by the Mayor. Mr. LaVenture and Mr. Fay said it is incumbent on the proponent to convince the Board that the zoning amendment is of benefit to the City. Mr. LaVenture questioned whether the proposed amendment could be considered spot zoning. Mr. Falk felt that recent cases prove that spot zoning is easier to defend. Mr. Batta reiterated his long-time commitment to the City explaining that his successful location in Marlborough is an anomaly in today's regionalized dealership environment. Mr. Falk and Mr. Batta encouraged the Board to consider the economic development benefit to the east side of the city. Mr. Batta shared the considerable restrictions on the parcel he wishes to utilize for certified used car sales. He feels that regardless of the future zoning overlay district that may be introduced, any tenant of that property will need to comply with the restrictions of the land owner, RK Development. He does not feel that any alternate use proposed under current or future zoning will be "better" than his proposed use. Despite the Board's appreciation for this dealership's community standing, the Board's majority was not comfortable making a favorable recommendation. (Member Hodge expressed his favorable view of the proponent's proposed use of the ancillary parcel.) The Board took the following vote:

On a motion by Mr. Fay and seconded by Mr. LaVenture, the Board voted to reserve its opinion on the proposed zoning amendment. Motion carried.

While the Board felt there was some merit to the proponent's revised "Option 1" amendment which limited ancillary auto sales to only dealerships with a Class I license (new car sales), the Board felt the timing on the proposed amendment was problematic. The City is researching a potential Route 20 Overlay District, and the Board would prefer a comprehensive review of land use and consideration of the City's vision for the area rather than making a recommendation to satisfy any individual business concern. Should the Council consider the proposed modified zoning amendment, the Board would recommend a change in the language as follows:

##### **Option 1: Class I Licensees in Business and Commercial Automotive Zones**

###### **In Section 650-5B ANCILLARY AUTO SALES**

Places for the sale of new or previously owned cars, trucks, boats and farm equipment, along with incidental servicing and repair of vehicles, provided that any Ancillary Auto Sales use shall **be (i) operated in conjunction with a lawful primary Auto Sales use with a Class I license, (ii) allow only one ancillary location within 1,000 feet of the primary Auto Sales use, and (iii) shall not be larger than the primary Auto Sales use.**

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

C. Walker Brook Estates – **Vote on Engineering Recommendation Letter-** Request for Bond Reduction

Mr. LaVenture read the September 20, 2018 letter from City Engineer DiPersio into the record. The Engineering Division has reviewed the completion status of the subdivision and finds the subdivision construction satisfactorily completed.

Engineering recommends that the bond be reduced from \$63,000 to \$0. Engineering requested that the developer provide legal descriptions of the streets and municipal easements to draft a Council acceptance order. To date, they have not been received. On a motion by Mr. Fay, seconded by Mr.

LaVenture, the Board voted to conditionally reduce the bond from \$63,000 to zero, pending receipt of the legal descriptions of streets and municipal easements. Motion carried.

**D. Goodale Estates**

Solicitor Rider updated the Board regarding the bankruptcy status at Goodale Estates. Goodale has worked out a Settlement Agreement with its lender, Northborough Capital Partners (NCP), which would be effective only upon dismissal of this bankruptcy case. Solicitor Rider will be monitoring the case for relevant updates. On a motion by Mr. Fay and seconded by Mr. Russ, the Board voted to accept and file the correspondence related to this matter and to request that Solicitor Rider prepare a letter on behalf of the Board informing NCP and Goodale (Paul Ricciardi) of current subdivision deadlines and requirements. Motion carried.

**6. Preliminary/Open Space/Limited Development Subdivisions**

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

The proponent provided no further updates for the meeting. Chairperson Fenby declared the public hearing on the Hager St. open space special permit application closed. The Board's decision on the special permit is due 12-17-18 (Closest meeting date prior to December 23, 2018 deadline).

**7. Definitive Subdivision Submission (Continued Discussion)**

**A. 215 Simarano Dr. – Decision on Definitive Subdivision Submission**

The Board requested the opinion of Solicitor Rider regarding the requested covenant prior to endorsement of the definitive subdivision at 215 Simarano. Can the Board rescind the approval if the applicant has no intention of completing the subdivision within the two-year period specified in the application? The City's subdivision regulations state:

**Performance guarantee. Before endorsement of the Board's approval of a definitive plan of subdivision, the subdivider shall agree to complete the required improvements specified in Article V for any lots in a subdivision, such construction and installation to be secured by one, or in part by one and in part by the other, of the following methods, which may from time to time be varied by the applicant with the written consent of the Planning Board. 1) Approval with bonds or Surety 2) Approval with covenant.**

Solicitor Rider explained that despite the appearance that the subdivision application was filed in "bad faith", the applicant had full rights under the law, thereby securing the statutory zoning freeze. The courts have upheld that any remedy is through legislative action.

The applicant's counsel has indicated his willingness to appear at the Board's October 15, 2018 meeting to discuss the issue of security for a subdivision road the owner has no intention of building at this time.

On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to defer discussion of item 2B. Tracking Spreadsheet to a future meeting. Motion carried.

**8. Signs (None)**

**9. Informal Discussion (None)**

**10. Unfinished Business (None)**

**11. Correspondence (None)**

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

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

/kih

Respectfully submitted,

  
George LaVenture/Clerk