

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

December 3, 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, Phillip 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. November 5, 2018

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the minutes of November 5, 2018. Motion carried.

2. Chair's Business

- A. Set public hearing date- Proposed Zoning Amendment, Council Order #18-1007460, Modification of Jurisdiction: Lawful Pre-Existing Nonconforming Single and Two-Family Residential Structures. The public hearing was scheduled for January 7, 2018 at 7:00 pm.
- B. Timelines for Planning Board Decisions – On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to move item 2B. to the end of the agenda. Motion carried.
- C. The Planning Board's year-end get together will take place following the December 17th meeting. Ms. Holmi will send invitations and make the reservation.

3. Approval Not Required

- A. 150 Hayes Memorial Drive, Middlesex South Book 1228, Page 149, Allen & Major Associates on behalf of The Gutierrez Company. David Robinson, Project Engineer Allen & Major Associates, attended to present the plan. Scott Weiss of The Gutierrez Company was also present. The plan removes a lot line between the 14-acre parcel in Marlborough and a 23.8-acre parcel in Northborough, creating a new 37.8-acre parcel. A parcel of roughly 59 acres will remain in Northborough. Mr. Fay asked why the applicant had not filed the plan as an 81X plan. Mr. Robinson stated that in Marlborough, the lot lines remain the same except for the removal of the line dividing the Marlborough and Northborough land, but there will be a new line created in Northborough dividing the parcel added to the land in Marlborough and the remaining land in Northborough. Mr. DiPersio commented that the language in the certification block is written as though the plan was an 81X plan. Mr. Robinson stated that is their usual language, and it has not been a problem in the past. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to accept and file all correspondence and refer the plan to Engineering. Motion carried.

4. Public Hearings (Continued)

- A. Council Order 18-1007404A, Proposed Zoning Amendment to Sections 650 §34 & Section 650 §41 to amend certain provisions of the Marlborough Village District and Table of Lot Areas, Yards and Height of Structures (Main Street Area). Attorney Brian Fay from Mirick O'Connell and Ken Feyl from the project architect were present.

Ms. Fenby reopened the public hearing. She asked for the Board's input. Mr. Fay restated his previous comment regarding zoning within special districts. Mr. Fay's preference is to set zoning "by right" within the district vs. "by special permit". He noted that part of the appeal to development within these special districts is to offer consistent and predictable zoning. In his opinion, the special permit process introduces uncertainty, which can be an obstacle to redevelopment. He also stated that leaving the zoning open to special permit by an indeterminant makeup of future City Councilors adds additional uncertainty and reduces control. City Councilor Delano asked for permission to address the Board. Mr. Delano offered that allowing for special permits within the zoning district provides flexibility.

No zoning ordinance can foresee each circumstance that may come up. The special permit process allows for a case-by-case review. Mr. LaVenture agreed with Mr. Fay's position that special permits should be kept to a minimum. Mr. Russ expressed that the requested special permit in this project pushes the Marlborough Village District close to existing neighborhoods. This proximity could negatively impact the existing neighborhood. Councilor Ossing added that while all zoning is set up with good intentions, zoning is a "living document". While City Council does their best at framing the zoning districts, sometimes evolving circumstances dictate review and modification. Mr. Falk said that the difference between what is allowed by right and their request is minimally more impactful on the existing neighborhood. He stated that under the special permit request, the back-of-property roof line would only be about 5 feet higher than existing zoning. The special permit allows for an enhanced roof deck. Ms. Fenby asked Mr. Falk whether the rear neighbor had been contacted for potential parking options. She said that parking spaces can be scarce at peak times downtown. He indicated they had not contacted the neighbor about parking. Ms. Fenby declared the public hearing closed and asked for a motion.

On a motion by Mr. Hodge, seconded by Mr. LaVenture, the Board voted to make a generally favorable recommendation on the proposed zoning amendment with the following comments:

The Board expressed that requiring a special permit within the Marlborough Village District introduces a potential deterrent to development. Approval uncertainty may discourage development within the District and lengthen the development cycle. The Board's preference is to set the desired standards within the District and allow developments meeting zoning to proceed by right.

The Board's second comment was directed at the developer and is not related to the proposed zoning amendment. During peak times, downtown parking is scarce. The Board requests that the developer investigate potential parking on the neighboring parcel in the back of the proposed development. Motion carried.

- B. Marlborough Hub, LLC - Definitive Subdivision Application, Assessor's Map 82 Lot 125, Middlesex South Registry of Deeds Book 64574 Page 193. Project Engineer, Jacob Lemieux of Hancock Associates, was in attendance to introduce two plans: A "No Waiver" plan and a "Definitive Subdivision" plan. Mr. Lemieux first reviewed the no waiver concept plan dated November 26, 2018. The plan includes a 25' radius curve to Valley St. and corresponding detail. The plan also demonstrates a full-width sidewalk, 50' right of way and an A.D.A compliant profile. The plan includes a gate to the adjacent park. Sean Fay asked why the applicant isn't going to build the no waiver plan if it had been demonstrated that it can be built. Mr. Lemieux indicated that the no waiver design places lots too close to the former railway property and would also "squeeze" the drainage. Mr. DiPersio was asked whether the no waiver plan was viable. Mr. DiPersio answered yes.

Mr. Lemieux next presented the desired definitive plan which includes the following four waiver requests:

- 1) **Waiver** from Standards Section A676-12(B)(5): "Property Lines at Street Intersections shall be... 25 Feet at other intersections" **Proposed: 25' Roadway Radius Easement proposed on one side.** Note: Mr. Lemieux indicates that an easement agreement has been signed with the resident at the intersection of the proposed private way and Valley St.
- 2) **Waiver** from Standards Section A676-12(c) (1) (a) "The minimum width of roadways shall be as follows: Secondary Streets: Fifty Feet (50') **Proposed: 40' Right-of-way**
- 3) **Waiver** from Standards Section A676-24(B)(2) (b): Minimum Roadway Width shall be... 32 Feet" (secondary streets). **Proposed: 28' Width**

- 4) **Waiver** from Standards Section A676-26(A)(1): "Unless otherwise specified by the Planning Board, the sidewalks shall extend the full length of each side of the street and shall be.... a minimum of six feet including curb." **Proposed: 4' Width on one side.**

Mr. Peznola from Hancock Associates discussed ADA compliance requirements with the Board. The possibility of a "passing area" was brought up. He will review regulations and modify plans accordingly. Mr. Peznola also indicated that the updated definitive plan also contains two ADA compliant parking spaces near the gate to the John Street park. A Request for Determination (RDA) has been issued by the Conservation Commission. On a motion by Mr. Fay seconded by Mr. LaVenture, the Board referred the plans to Engineering for review and recommendations. Motion carried.

5. Subdivision Progress Reports (Updates and Discussion)

A. Subdivision Status Report

Goodale Farms: Mr. DiPersio indicated that the onset of snowy and cold weather has delayed the scheduled roadway paving. It was recommended that this work be rescheduled in the spring.

- B. Mauro Farms: Mr. LaVenture read the November 21, 2018 recommendation letter from City Engineer DiPersio into the record. Engineering Division has determined that the construction of the roadways and installation of municipal utilities and roadside improvements have been satisfactorily completed and can recommend a favorable response to the Marlborough City Council for acceptance. Engineering further recommends that the Planning Board consider reducing the current \$185,000 maintenance bond from \$185,000 to zero. On a motion by Mr. Fay, seconded by Mr. Russ, the Board voted to accept and file the correspondence and reduce the bond securing the subdivision from \$185,000 to zero. Motion carried. On a motion by Mr. LaVenture and seconded by Mr. Hodge, the Board voted to make a favorable recommendation to City Council for acceptance of Nolan Way, Spenser Circle and Reagin Lane as public ways and that their appurtenant easements be accepted as municipal easements. Motion carried.

- C. Home Rule Petition: The Planning Board previously requested the City Engineer and City Solicitor update the Board on the status of a Home Rule Petition on street acceptance. Mr. Rider indicated that the draft petition was last updated in 2017. The Board expressed it is in favor of this legislative remedy for acceptance of older streets in the City.

6. Preliminary/Open Space/Limited Development Subdivisions

A. Hager St. Open Space Special Permit

Peter Bemis from Engineering Design Consultants provided the Board an update on the latest plan, October 25, 2018 (Revised November 15, 2018). The proposed development now contains 5.926 acres- 4.725 acres of the proposed development in Marlborough in zone Rural Residence, and 1.201 acres located in an R4 zone in the City of Framingham. Decision on the special permit is officially due by December 23 (or December 17, the next meeting of the Planning Board.)

Mr. Rider asked Mr. Bemis to explain an apparent inconsistency in the notes section of his plan. Parcel Note 2 refers to Parcel A in support of agricultural use activities on the adjacent open space parcel. The Assistant City Engineer's 11-29-18 letter refers to Parcel A for an ancillary use for the abutting parcel in Framingham. Mr. Rider would like additional clarity on the proposed agricultural use on the open space parcel. There should be a determination that zoning allows such use. Note 2 should be modified to remove reference that the barn on Parcel A and agricultural activities are allowed ancillary uses in Marlborough. There is also a reference to Note 4 in Parcel A, but there is not a Note 4 listed on the plan.

Mr. LaVenture asked where the barn was going to be located. Mr. Bemis indicated a position near the RT 20 entrance to the property. Mr. LaVenture raised a concern that might place it in a position blocking the view of grazing live stock from RT 20, something that was desirable and had been a "selling" point of the proponent. Mr. Bemis indicated they would relook at positioning.

The Board would like Mr. Bemis to return with a legal opinion from the project's attorney outlining how the proposed use meets City zoning. Mr. Fay expressed that the Board would like to see draft findings prepared for review by the City's Legal Department. Ms. Holmi provided two samples to Mr. Bemis.

Mr. LaVenture read the 11-29-18 letter from Assistant City Engineer Collins into the record. The letter provides a favorable recommendation to the Marlborough Planning Board to grant a special permit for an open space development containing 3 building lots off Hager St., an open space parcel and parcel A, an ancillary use for an abutting parcel in Framingham, which is also owned by South Coast Advisors, LLC. On a motion by Mr. Fay, seconded by Mr. Russ, the Board voted to accept and file. Motion carried. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to refer the open space plan back to Engineering and the Legal Dept. Motion carried.

7. Definitive Subdivision Submission (None)

8. Signs (None)

9. Informal Discussion

- A. Proposed ANR - 91 Bolton St. Map 57 Parcel 255. Applicant Jessica Karina Marin; Engineer, Dennis O'Brien (Land Surveyor) The applicant did not attend the meeting. The applicant's proposed plan requires variances from the ZBA. It was suggested that the applicant also meet informally with the ZBA prior to a formal application.

10. Unfinished Business

- A. Item 2B – Timelines for Planning Board Decisions

On a motion by Mr. LaVenture, seconded by Mr. Fay, the Board voted to reopen item 2B from earlier in the meeting. Mr. LaVenture acknowledged that Mr. Rider previously provided a clear legal determination establishing filing dates for ANR and subdivision filings. Mr. LaVenture said it would be helpful for a similar determination on Clerk filings. Mr. Rider indicated that action was considered taken by the Board when notice had been properly filed with the City Clerk. The Board also discussed who may vote on matters before the Board. Mr. Rider explained that the determination centers around whether there are adjudicatory rights associated with the hearing. Only members present at the public hearing may vote on adjudicatory matters. City Council may use the Mullin Rule process to "catch up" on a single missed meeting. That option is available since the meetings are recorded. Planning Board meetings are not.

11. Calendar Updates

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.

Respectfully submitted,


George LaVenture/Clerk

/kih