

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

March 11, 2019

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, Philip Hodge, Sean Fay, George LaVenture, Chris Russ and Matthew Elder. Also in attendance were City Engineer, Thomas DiPersio, City Solicitor, Don Rider and Planning Board Administrator, Krista Holmi.

1. Meeting Minutes

A. February 25, 2019

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the meeting minutes of February 25, 2019 as amended. (Two minor typographical edits.) Motion carried.

2. Chair's Business

- A. Set Public Hearing Date – City Council Order No. 19-1007552, Section 650-8, "Boundaries Established"**
Proposed rezoning of Map 82, Parcels 112 and 113, and adjacent portions of John Street to the center line in the Business District. (31 and 35 John Street) Mirick O'Connell Attorneys at Law on behalf of St. Mary's Credit Union. Public hearing set for April 8, 2019.
- B. Notice: Public Listening Session - Municipal Vulnerability Preparedness (MVP) Draft Report, March 25, 2019, 6:00-7:00 pm, Memorial Hall. Presenters - City of Marlborough MVP Team Coordinator and The Metropolitan Area Planning Council.**
Ms. Fenby asked how the session would be advertised. Ms. Holmi informed the Board that a press release had been sent to all local news outlets, the notice is on the City Website, posted on the City's Facebook page and entered into the community calendar. Additional invites will be sent to Council members and the workshop attendees.
- C. Ms. Fenby reminded the Board and members of the public that one vacancy remains on the Planning Board. As vacation schedules sometimes conflict with meetings, it is preferable to have a fully staffed Board. Spread the word to anyone who may be interested in serving.**

3. Approval Not Required

- A. ANR APPLICATION – Applicant: Atlantic-Marlborough Realty, LLC, 205 Newbury Street Framingham, MA 01701; Engineer, SMMA 1000 Massachusetts Ave, Cambridge, MA 02138; Professional Land Surveyor, BSC Group, 33 Waldo St., Worcester, MA; Description of Property- Middlesex South Registry of Deeds, Book 66945, Page 193 (Off Forest Street and Simarano Dr.)**
Mr. LaVenture read the March 11, 2019 recommendation letter by Assistant City Engineer Collins into the record. After completing his review of the subject plan, Engineering provided a favorable recommendation to the Planning Board to endorse the above referenced plan. On a motion by Mr. Fay, seconded by Mr. Russ, the Planning Board duly voted to accept and file the letter and endorse the 02-28-19 plan of land believed to be "Approval Not Required Under Subdivision Control Law". Motion carried.

4. Public Hearings

- A. Public Hearing Order No. 19-1007533, Proposed Zoning Amendment-Chapter 650-36- to create the Executive Residential Overlay District. (Simarano Drive and Cedar Hill Road Area). Brian Falk and Arthur Bergeron of Mirick O'Connell, Attorneys at Law on behalf of Post Road Residential, LLC. Thomas and Andrew Montelli, Post Road Residential, 11 Unquowa Road, Fairfield, CT.**

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:

Brian Falk and Arthur Bergeron of Mirick O'Connell introduced the proposed zoning amendment. The amendment covers approximately 43 acres of undeveloped land currently zoned industrial and limited industrial. Mr. Bergeron stated the site is so large, that it can support its own overlay district. The property was purchased in 2000 by Boston Properties; however, no viable projects have come to fruition despite the existence of a 2004 approved office building site plan. The project under the new proposed zone, the Executive Residential Overlay District, is a phased apartment development of high-end, high-quality, multi-family residences. Other uses in future phases could potentially contain complimentary restaurants, commercial or co-working spaces. A slide from the proponent's PowerPoint presentation indicates a favorable tax advantage of \$793,340 (when comparing the equivalent development areas of Boston Properties' A & B office building project vs. Phase 1 and Phase 2 of the proposed Post Road Residential project.)

Mr. Thomas Montelli of Post Road Residential continued the presentation by sharing some historical data on Marlborough's total office vacancy rates (1988 to today) as well as a snapshot comparison of the Boston, Cambridge, RT 128 and 495 Office & Lab / Class A & Class B markets. Mr. Montelli used the market snapshot to answer a question that often comes up during rezoning: Shouldn't the City have a land bank for future office expansions? Boston Properties has considered the financial feasibility of an office development and Mr. Montelli stated that the "Demand-Side Vacancy vs. Rent Growth Potential" does not support office expansion in this area. Boston and Cambridge are strong markets garnering approximately 72% of venture capital investment. He added that 65% of job openings are in those markets as well. Stagnant rents in the Marlborough area cannot support the high costs of office space development.

Mr. Andy Montelli spoke next. He explained that Post Road Residential has been working on this project for about 15 months. He has approximately 32 years of experience working with both Trammell Crow and Fairfield Residential (Stonegate Project). He explained that the competitive players in this market, Avalon and Talia, operate on volume. He differentiated Post Road Residential as more lifestyle oriented with a thoughtful and careful design approach inspired by boutique hotels. He showed slides representing some of their projects. Mr. Montelli stated that many of their residents are relocated from out of state. They don't know their neighbors and at Post Road, they feel a responsibility to create a community feel with planned events and activities for residents.

Mr. Bergeron summarized that the zone only applied to the outlined area and reiterated the tax differential of residential development vs. office development. Mr. Bergeron, while commending the neighboring development (TJX, GE, Quest area), he pointed out that those buildings were repurposed, and were not built from the ground up.

Speaking in Favor:

As no person spoke in favor of the proposed amendment. Chairperson Fenby closed that portion of the hearing.

Speaking in Opposition:

As no person spoke in opposition to the proposed amendment. Chairperson Fenby closed that portion of the hearing.

Questions and Comments from Board Members:

Mr. Fay commented that when evaluating these zoning changes, two questions need to be answered: Does the new zone fit into the surrounding neighborhood? Does the new zone adversely impact the neighbors? Mr. Andy Montelli responded by stating this site is removed from single family residential areas, and this development provides a project differentiated from offerings by either Avalon and Talia. This project will look more like a design from the Boston or Cambridge markets.

Ms. Fenby noted that there appears to be a trail system throughout the property. She asked whether the public could have access. Mr. Montelli said that the site is designed for private use by the residents, but they would be willing to look at providing public access if that is what the City desired. They have spent time designing around the site (which includes wetlands) and they have 4500 feet of trails planned throughout.

Mr. DiPersio asked how the requested 80' maximum height was selected. Mr. Montelli explained that a wood frame structure is limited to 5 stories, or 6 stories using a podium. Heights above that require a steel structure. He explained the area's current market does not financially support the costs associated with steel structure construction. Mr. LaVenture asked how many stories would equate to 80'. Mr. Falk explained that the 80' was selected rather than a specific "stories" specification, since the definition of stories has a lot of gray area.

Mr. Elder asked the proponent to explain a bit more about the eligible uses in the zone. Mr. Montelli explained that Phase I and II are fully residential. Phases 3 and 4 could contain complimentary uses such as a fitness establishment or other amenities such as neighborhood dining, a great local coffee shop, retail or other lifestyle-related uses that could make the development even more desirable.

Mr. LaVenture asked Mr. Montelli to quantify the full project's ideal percentage mix of residential vs. retail. Mr. Montelli speculated that a 90% residential (possibly inclusive of age restricted housing) and 10% other, which could be either retail, a gym, co-working space or a restaurant.

If the amenities make the development more desirable, Mr. Hodge wondered why not build some of the other amenities up front when you build the 450 residential units? It is not uncommon for these ideas to be presented and then not ultimately happen. Mr. Montelli said there is a saying in the industry. Retail follows rooftops. Retail brokers say that RT 20 is hot right now, and mixed uses are going to gravitate to RT 20. The residential piece needs to come first to create demand.

Mr. Russ noted the large surface parking areas in the development. He asked whether underground or structure parking could reduce the need for these surface lots. Mr. Montelli explained that structured parking is too expensive for this area. The design is a function of economics. He did offer that his organization has a lot of talent that is working on creative design elements such as rain gardens, solar and geothermal elements.

With no further comment from the Board, Ms. Fenby closed the public hearing.

5. Subdivision Progress Reports (Updates and Discussion)

A. Engineer's Report- Subdivision Status Report

City Engineer DiPersio informed the Board that the Public Services Committee is expected to report out their recommendation for street acceptance of Goodwin St. and McDermott Way (Cider Mill Estates). The full City Council will still need to vote. There are no further updates.

6) Preliminary/Open Space /Limited Development Subdivision Submissions / Updates

A. Hager St. Open Space Special Permit

i. Comments from Engineering re: Certificate of Vote

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to waive the reading of the March 7, 2019 correspondence from Assistant City Engineer Collins. The letter details Engineering's initial review of the Certificate of Vote document, which was submitted by Engineering Design Consultants on 2-11-19 as part of the Open Space Special Permit application process. The letter identified numerous corrections to the procedural findings, project findings and conditions. Mr. LaVenture thanked the Engineering Division for their thorough review and comments.

City Engineer DiPersio summarized that the Special Permit establishes the # of Lots, the open space protection and disposition. After that, Mr. Bemis will need to submit an ANR for the development lots.

ii. Correspondence from Solicitor Rider

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to waive the reading of the March 8, 2019 correspondence from City Solicitor regarding Legal aspects associated with the Hager St. Open Space Permit application. His extensive review identifies several issues of the proposed development, including the proposed use and ownership of the Open Space Parcel and the proposed extent of the Conservation Restriction. Solicitor Rider indicated that the review brings clarity to zoning issues related to the proposed development as well as the formulation of the Conservation Restriction.

Mr. Fay said that it would be a mistake to just consider the current ownership and his desired use, but to consider what types of animals the next owner of the adjacent parcel might want to raise when the current owner is no longer in control of the livestock using the open space parcel. Mr. Fay expressed concern about the disposition of the animals being raised by future owners. Ms. Fenby agreed that the Conservation Restriction is based on the current owner's proposed use. Mr. LaVenture was concerned that the LLC, as the proposed owner of the open space parcel, could effectively block any amendment of the rules and regulations of the Open Space Parcel.

Mr. Bemis acknowledged that a further extension of the decision on the Open Space Special Permit is required. He will prepare an extension request for the next meeting, March 25, and will include a workable timetable. Mr. Bemis restated the intent of the proposed development. His client wishes to build three house lots, while preserving an open space parcel for the grazing of cows. In evaluating the next steps, Mr. Bemis will be concentrating on Solicitor Rider's conclusions and make the necessary changes to maintain the project's viability. He does not wish to withdraw without prejudice, which was suggested by Chair Fenby. He wishes to proceed now.

Mr. Fay repeated his understanding of Solicitor Rider's summary comments. The portion of the open space parcel in Marlborough appears to conform to agricultural use zoning, but there is a portion of the open space parcel in Framingham that appears to not allow this agricultural use. Does this mean that a fence erected for the containment of livestock would need to divide the Marlborough and Framingham land? Solicitor Rider thinks it's important that these questions are answered by Framingham.

Ms. Fenby polled the Board members to gauge their support for the project. Mr. Russ was generally in favor but would like the conditions to be clear in limiting the number of animals allowed in the open space. He also thought there should be some specificity on fence type and whether there was an easement for trails included. Mr. LaVenture would like to preserve the open space site view from Route 20. He also wondered if there was a plan for recovery of any animal that may wander off the site. Mr. Bemis responded that cows have grazed on that parcel for the past 30-40 years without incident and felt confident that would continue. Mr. Fay is a proponent of an electric fence to contain the animals. He also said the ownership of the open space is non-negotiable. The ordinance is specific to the available options. Mr. Fay also wants there to be further clarity on who would be allowed to use the open space. Could the public use the space? Could cows owned by a third-party graze on the land? Mr. Hodge is generally in favor of a proposal that preserves open space but acknowledged that the applicant still has a lot of work to do, particularly considering Solicitor Rider's comments. Mr. Bemis said that maybe it would come down to just becoming open space and not include the agricultural use aspect. That's not desired, but if the obstacles are too great, it may come to that. Mr. DiPersio said that additional details on how the open space will be maintained are necessary. Will it be mowed? If they no longer graze cows, could the lot be reforested? Mr. Bemis felt the intent would be to mow the property. Mr. Fay asked whether his client had considered a long-term lease with the homeowners' association. He suggested something like 10 years, not 50. Mr. Fay said the intent of the open space development is not for the hobby of an individual owner, but he does see value in preserving land and maintaining the rural look and feel of the open space by having grazing cows.

7. Definitive Subdivision Submissions / Updates (None)

8. Signs

- A. Application for Sign Appeal/Variance – 342 Boston Post Road East, James Hall, Attorney, Adler, Pollack & Sheehan on behalf of Colbea Enterprises, LLC.

Attorney Hall introduced himself as representative of Colbea Enterprises, LLC. He is seeking variance relief on several sign-related issues at the proposed Seasons Gas Station and Corner Market at 342 Boston Post Road East. He described the project as “high-end” with many improvements over the existing station at that location.

Mr. LaVenture read the February 26, 2019 letter from Code Enforcement Officer Wilderman regarding the Colbea Enterprises, LLC sign application at 342 Boston Post Road East. Ms. Wilderman details several elements of the application she indicates require variances from the Planning Board. Ms. Fenby instructed Attorney Hall that the Board would address each instance individually.

- **Freestanding Sign: Section 526-13 of the City Code (specific to digital display signs) requires “From sunrise to sunset, the background or field shall be a single color and the message shall be a single contrasting color.” Applicant proposes two separate colors for regular and diesel fuel.**

Mr. Hall explained that industry standards use red to signify regular gas pricing, while green is used to represent diesel fuel pricing. Utilizing one color to signify both fuel types would be confusing to the public accustomed to this color-coded pricing convention. The applicant wishes to use this color convention on both the free-standing sign and on the pumps. Mr. Hall believes the Board may grant desirable relieve without substantially derogating from the intent and purpose of the chapter. Larry Coburn, Chief Strategy Officer of Colbea Industries, supported Mr. Hall’s comments regarding industry standards. Planning Board member Elder spoke in support of the variance. As an individual who has experience driving diesel vehicles, he explained that drivers are absolutely looking for green. He supported the applicant’s justification stating that green and red pricing adds clarity and won’t distract drivers looking for the diesel pricing. He said he would drive right past a station not displaying green. Mr. La Venture expressed that he is not in favor of addressing these sign variance requests in a piecemeal fashion. He is firm in his belief that the City should review the ordinance and set the desired standards.

On a motion by Mr. Hodge, seconded by Mr. Russ, the Board voted to grant the variance allowing the display of red to represent regular gas pricing and green to represent diesel pricing. The variance is allowed on the requested free-standing sign and at individual pumps. Motion carried. Mr. LaVenture opposed.

- **Digital Display Signs: Chapter 526.13 states: “EMC signs shall only be permitted as part of a freestanding sign and shall comply with all the requirements of Section 526-9. There shall only be one EMC sign permitted on each nonresidential-zoned parcel.” Applicant proposes LED pricing signs and video display signs at each pump.**

Attorney Hall stated that Colbea Industry proposes to utilize built in digital display signs at individual pumps. He acknowledged the Board had previously denied another request for similar devices; however, Colbea is willing to utilize the devices for instructional and point of sale transactional use only. They are not proposing to use the devices for advertising at this time. Mr. Hall introduced the Board to Andrew DelliCarpini, CEO of Colbea Industries.

Mr. DelliCarpini from Colbea Industries, Smithfield, RI, explained that the digital displays can display sports, weather, advertising, etc. The displays Colbea utilizes at the pumps are designed to operate only when a customer lifts the nozzle. They do not run continuously like some other units.

He estimated that the sound on the devices only carries between 5-7' from the pump. Colbea is willing to use the devices for information only, with no sound. He explained that the Seasons brand is his own, and that the way the property looks is an important part of his brand. He likes to limit the signage at his properties and feels that gas pumps are too often littered with signage. These displays can improve the look of properties by replacing typical signage. He said his stations look more like parks than gas stations. Mr. Fay questioned, "What is the difference between these displays and what Starbuck's or McDonald's does in their drive throughs?" Mr. DelliCarpini continued that the video displays would be configured with no audio and be used for instructions and point of sale data only. Sound, video or advertising will not be part of the displays unless the City allows for such applications in the future.

Mr. LaVenture hates to be a stickler on these issues but is firm in his believe that the City should re-evaluate and rewrite the ordinance to add additional clarity. The City has no yardstick to evaluate modern-era signage and point of sale devices. Mr. Hodge is fine with the video displays if there is no audio. Mr. Elder does not think these devices pose a noise issue. He thinks that allowing informational and point of sale use is a good start. He is in favor of the variance request.

On a motion by Mr. Fay, seconded by Mr. Russ, the Board voted to grant the variance to allow both digital displays and pricing displays on each side of the five pumps, conditioned on the following restrictions:

- Audio shall be prohibited from the digital display signs or pricing display units.
- Digital Display Signs shall be utilized for informational and point of sale transactions only.
- Video and advertising shall be prohibited from the digital display signs and pricing display units

Motion carried. Mr. LaVenture opposed.

- **Flat wall signs: Based on the linear footage of the proposed building, you are allowed a total of 100 square feet of flat wall signage. Applicant proposes 150.1 square feet.**

Attorney Hall believes that his client's requested variance does not derogate form the intent and purpose of the ordinance.

Mr. Fay said that the applicant has not demonstrated significant hardship or a public benefit in deviating from the City's standards. As an example, he used larger signage provided at a busy intersection that would benefit the public's safety. He said the Board has previously denied signage to Price Chopper who wished to exceed the flat sign allowance. The Board said the signage would have dominated the entire building. Mr. DelliCarpini responded that his signature "Seasons" sign is custom made in a channel design that is open between letters. It is specially made for his properties and is properly sized since the mandatory gas canopy would obscure a smaller sign. He went on to say that the "Corner Market" decal sign and "Welcome" signs are part of his branding. Mr. Hodge suggested that this signage could be moved inside to the windows. The applicant has other options but has chosen to use external flat wall signs.

Chairperson Fenby asked for a motion on the requested variance for flat wall signs. Mr. Elder motioned to approve the request flat wall sign variance. The motion was seconded by Mr. Fay. The motion did not carry.

On a motion by Mr. LaVenture, seconded by Mr. Hodge, the Board voted to deny the requested variance for **Flat Wall Signs**. Motion carried.

The applicant failed to convince the Board that granting of the variance would not substantially derogate from the intent and purpose of the chapter.

9) Informal Discussion (None)

10) Unfinished Business (None)

11) Calendar Updates

- A. April 8: Public Hearing on proposed zoning amendment Council Order 19-1007552, Section 650-8, "Boundaries Established" Rezoning of Map 82, Parcels 112 and 113 (31 and 35 John St.) and adjacent areas of John St.

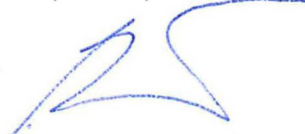
12) Public Notices of other Cities & Towns

- A. City of Framingham –3 Notices

On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to accept and file the notices. Motion carried.

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

Respectfully submitted,



George LaVenture/Clerk

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