

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

March 25, 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, 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. Phil Hodge absent.

1. Meeting Minutes

A. March 11, 2019

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the meeting minutes of March 11, 2019 as amended. (Amended motion, comments added to item 6A) Motion carried.

2. Chair's Business

- A. Prior to the Planning Board the City held a Public Listening Session on its Municipal Vulnerability Preparedness (MVP) Draft Report. The City will now seek its certification as an MVP Community, making it eligible to apply for state MVP Action Grants. Thank you to all who participated.
- B. Set Public Hearing Date – City Council Order No. 19-1007587, Section 650-8, "Boundaries Established" Proposed rezoning of Map 113, Parcels 5 and 6, - Land off Williams St. The Public Hearing was scheduled for Monday, April 29, 2019.

3. Approval Not Required

- A. ANR – Applicant: East Dudley Heritage Realty Trust, 46 East Dudley St., Marlborough, MA 01752; Engineer, Hancock Associates, 35 Elm St.; Description of Property- Middlesex South Registry of Deeds, Book 54065, Page 211.

Mr. Fay left the meeting prior to the presentation citing a conflict.

Mr. J. Dan Bremser, PLS, Senior Project Manager at Hancock Associates was present. Mr. Bremser indicated the purpose of the ANR is to create a small, un-buildable parcel (Parcel C) only to be used in conjunction with the abutting property. It is an arrangement between neighbors in advance of a property sale. On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to refer the plan to Engineering. Motion carried.

4. Public Hearings

- A. City Council Order No. 19-1007543, Proposed Zoning Amendment to Section 650-5, Entitled "Definitions word usage" **Mobile Food Truck**; Section 650-18, entitled "Conditions for Uses"; Section 650-48, entitled Off-street Parking; and Section 650-17, entitled "Table of Uses".

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:

City Councilor Mike Ossing (43 Varley Rd.) presented to the Board. Councilor Ossing explained that the proposed ordinance is an effort by the Mayor and the Marlborough Economic Development Corporation to offer opportunities for food trucks in the City while harmonizing their presence with the character of the City's neighborhoods. The guidelines established by the ordinance regulate where, for how long and the quality of such operations. In the interest of fairness to "brick and mortar" restaurants, a 2% meals tax will also apply to mobile trucks. The ordinance establishes a new definition and revises the table of uses. Mobile food trucks will not be allowed in residential neighborhoods. Mr. Ossing said the Mayor's Office oversees short-term (1-3 Day) permitting, and the City Council would issue permits of longer duration.

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. LaVenture asked Councilor Ossing what was driving the ordinance. Mr. Ossing explained that there have been requests by both local food vendors as well as office parks to have a mobile food truck on their sites. Mr. Ossing explained that previously, there were no rules established for food trucks. The ordinance provides a mechanism for a food truck application and enables the City to check for compliance with applicable codes. Mr. LaVenture wondered whether there would be a limit on the number of food trucks allowed in an area. He also asked how the two required parking spots were decided. He added that ideally, these would be in an area that will allow people to walk to the truck. Mr. Ossing stated that the parking spot requirement is to avoid situations such as a truck parking along RT 20 and creating a safety hazard. Mr. Elder asked whether the regulations specified anything about what happens at the end of the day. Some cities and towns require the trucks to "piggy back" with a local restaurant that ensures that the truck is properly sanitized. Mr. Elder commented that many food truck businesses have a cult following and could be used to bring people downtown. Councilor Ossing acknowledged that local restaurants may give a push-back on these mobile food trucks but said that restaurants often pick up ancillary business since these trucks do not have liquor licenses. Mr. Fay asked whether these regulations applied to food truck trailers that are "permanently" parked without wheels. He feels they should be. Who would approve any signage? What about ice cream trucks? What would stop an ice cream truck from parking in a location? There was some discussion about whether ice cream trucks applied since no food is typically prepared in the truck. Mr. LaVenture added that a noise aspect may be added to the ordinance. What if someone wants to play music from their truck, or perhaps use a public-address system?

With no further questions or comments, Ms. Fenby closed the public hearing.

- B. **Continued:** Council Order No. 18-1007484, Proposed Zoning Map Amendment to Sec. 650-8, Rezoning Map 104, Parcels 29 and 29A (Mill St. South and Brigham St.) from Industrial (I) Zoning District to Commercial Automotive (CA) Zoning District.

Ms. Fenby reopened the public hearing. Mr. Fay asked the Solicitor if members of the public could speak on the proposed amendment. Mr. Rider asked why the hearing was held open. Ms. Holmi read from the approved minutes. While the public comment portion of the hearing had been closed at the first hearing date on January 28, 2019, Mr. Fay had asked the representative for a contemplated plan for the area. Ms. Fenby said that continuing the public hearing also allowed members further time to visit the site. Solicitor Rider said that the scope of the presentation should be limited to the question about the site plan. Public comment should not be heard as that portion of the hearing was closed.

Presentation:

Neal Vigeant of 53 Redspring Road informed the Board that he is the owner of the property in question that he identified as 20 Brigham St. He wishes to rezone the property from Industrial to Commercial Automotive. He stated that Engineering Design Consultants is no longer representing the project. He wishes to create A & P Business Park on the site. Currently, the lot is underutilized as an overflow lot for the business across the street and contains trucks, trailers, machines and employee vehicles and landscape materials. He stated that developing the lot as Industrial is difficult due to the shape of the parcel, and that building a Commercial Automotive garage is much less expensive than an industrial building.

He feels that the site as a Commercial Automotive allows for more greenspace, with minimal traffic impact. He stated the property will be defined as a business and would have a nice curb appeal with no tractor trailers on the property. Mr. Vigeant showed the Board various renderings. His proposed design has three units being entered from Brigham St. and three units being entered from Mill St. South. He feels that the zone change will benefit the community since it allows him to clean up the lot by adding landscaping and irrigation, lighting and greenspace enrichment. He stated that rezoning will allow for increased tax revenue over his empty industrial zoned lot. He stated he wants to model his park after the Lacombe Business Park. He would like to establish similar covenants as the Lacombe Street Business Park where strict guidelines can keep the property well maintained and keep the neighbors happy. He proposes limited hours between 7am-7pm M-F. 8am to 5pm on Saturdays and no outdoor work on Sundays. Outdoor work is limited to minor repairs. No primary auto sales and establish a limit to the number of vehicles allowed at any one time per unit.

Questions and Comments from Board Members:

Mr. Fay asked Mr. Vigeant to compare his proposed development to Kennedy's Automotive. Mr. Vigeant stated that his property shouldn't have the same parking issues, and that there is not anything architectural about Kennedy's. Mr. Russ asked Mr. Vigeant to describe his proposed building materials. What are you using for siding, roofing, doors? What about landscaping and greenery vs. the amount of paving? Mr. Vigeant stated that since his building will be much less expensive than an industrial building, he can spend more on architectural elements and landscaping. He stated Commercial Automotive allows for more lot coverage, but the setbacks are greater, which allows for more greenspace. Mr. Russ asked if he plans to sell cars on the property. Mr. Vigeant stated that there may be incidental sales, but that won't be the primary business. Mr. LaVenture asked whether there were any traffic studies done for this use at that location? That is a busy intersection. Mr. Vigeant stated there were no traffic studies done. He asked how many vehicles could be parked there. He stated that there will be room for 3 vehicles indoors and three vehicles outdoors/unit; therefore, there will be up to 18 vehicles parked on the lot for the bays. Mr. LaVenture commented that the applicant already mentioned cost pressures associated with development. Since this is a zone change, the zone would apply to current and future owners. There are no guarantees that the property will be developed as you have presented. Commercial Automotive is only required to have 5000 sq. ft lots not the acre on industrial. If developed to capacity, traffic could be an issue. The concept of zoning is to drive development to standards. This will benefit the land owner, but why is this beneficial to the City? Mr. Vigeant stated that the vacancy rate of Commercial Automotive is zero, while Industrial is much higher. His land could sit vacant. Mr. LaVenture continued that business is risky. The lot was purchased as an Industrial lot and a zoning change should have a significant benefit to the City and not just the applicant. Mr. Vigeant replied that he is creating six new businesses in Marlborough and allows the City to collect more tax revenue. The lot will also be more pleasing than it currently is. Mr. LaVenture asked whether there are other properties owned by the family in the area. Mr. Vigeant indicated yes. Mr. LaVenture said that he is both a Board member and concerned citizen from the area. He lives on Brigham St. and is very familiar with the area. He stated that Marlborough Commercial Automotive properties are one of the least appealing in terms of aesthetics, and he is also concerned about potential traffic impacts.

Ms. Fenby asked for additional input from the Board. Mr. Elder stated he was not opposed to Commercial Automotive. Mr. Russ asked how Brigham St.'s status as a scenic road may factor into this decision. Mr. DiPersio did not see any impact to trees or stone walls that may have a level of protection. Mr. Fay stated that he felt that Commercial and Automotive fit into the neighborhood. The Board should always be cautious when developers show the "shiny object" when asked to evaluate zone changes. He also has a concern about the implementation of the covenant. He stated that while Mr. Vigeant may promise to have a covenant for the property, there is no obligation to impose the restrictions. Mr. Fay said the covenant must be put in place in the deed and transferred with any future sale. With no further comment, Ms. Fenby closed the public hearing.

4. Public Hearings

- C. City Council Order No. 19-1007552, Section 650-8, "Boundaries Established" Proposed rezoning of Map 82, parcel 125 to Residence C (RC). (Currently zoned both RC and I, Industrial) Mark Evangelous, Marlborough Hub, LLC.

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:

Mr. Evangelous, 108 Kelber Dr., was present to discuss the proposed zoning change. Mr. Evangelous explained the purpose of the zoning change. The property he wishes to develop currently has a mix of zones – residential, industrial and a small business section. In this proposed zone change, the remnants of an old industrial railway bed would be rezoned to residential to match zoning in the remainder of the parcel. He would propose transferring the small remaining business zone piece to his business neighbor. He indicates the abutters would much prefer a residential development on the land instead of an industrial use. He has also followed the Conservation Commissions requirement to perform a "21E" study to determine whether any contamination exists on the property. Mr. Evangelous stated he has the support of his ward councilor, Mr. Dumais. Mr. Evangelous said that the rezoned development will allow for a less dense use and site improvements. The roadway and sidewalk will also provide the neighborhood with walkable access to the John Street park.

Speaking in Favor:

No one spoke in favor of the proposed amendment. Chairperson Fenby closed that portion of the hearing.

Speaking in Opposition:

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

Questions and Comments from Board Members:

Mr. Fay asked if the ultimate purpose of the proposed amendment was to allow Mr. Evangelous to file a waiverless subdivision plan with the City. Mr. Evangelous indicated that it will be his intent to submit a waiverless plan, and the zone change will enable that. Beyond that, it makes the project and neighborhood better. It cleans up an area that is currently in poor condition. It's overgrown and used for dumping trash. This will be a nice neighborhood improvement. With no further questions, Ms. Fenby closed the public hearing.

Mr. Fay made a motion to send a favorable recommendation to City Council on the proposed zoning amendment. The motion was seconded by Mr. Russ. Motion carried. In its recommendation, the Board said that the zone change fits into the character of the neighborhood, imposes minimal impact on the neighborhood abutters and meets a demonstrated benefit by cleaning up a zoning anomaly remaining over the abandoned railway bed.

5) Subdivision Progress Reports (Updates and Discussion)

- A. Engineer's Report- Subdivision Status Report

City Engineer DiPersio indicated that Howe's Landing is in its maintenance period and is ahead of schedule in providing necessary acceptance documentation to the City. There were no further updates.

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

A. Hager St. Open Space Special Permit

At its regular meeting on March 25, 2019, the Planning Board took the following actions:

On a motion by Mr. Fay, seconded by Mr. Russ, the Board voted to accept and file on file the March 25, 2019 extension request letter from Peter Bemis of Engineering Design Consultants, Inc. on behalf of his client, South Coast Advisors, LLC. The Board further voted to approve the requested extension of the decision on the special permit application for the proposed open space development until June 7, 2019, but with the following conditions:

The applicant's representative shall appear before the Board on April 8, 2019 with a work plan schedule. The schedule should outline proposed completion dates for outstanding items identified during the Engineering and Legal reviews; the applicant's representative was provided with a complete list of the outstanding items at the Board's regular meeting on March 11, 2019. **It is the Board's expectation that all outstanding items will be submitted to the Planning Board by their regular meeting on May 6, 2019** to enable sufficient review time by Engineering, the City's Legal Department and the Planning Board. The outstanding items include but are not limited to the following:

Certificate of Vote Engineering Review

- Procedural Findings- Corrections
- Project Findings- Corrections
- Conditions- Acknowledgement of requirements and corrections

Legal Review

- Open Space Parcel- Resolution of open space composition (Marlborough and Framingham) and zoning considerations in Framingham.
- Homeowners' Association- Resolution of control and rights.
- Conservation Restriction- Proof of Approval by the Marlborough Conservation Commission and plan for approval schedule (City Council, Executive Office of Energy and Environmental Affairs).
- Conditions- Incorporation of any Board-imposed conditions.

7) Definitive Subdivision Submissions / Updates (None)

8) Signs (None)

9) Informal Discussion

A. Sign Variances

Mr. LaVenture addressed the Board regarding two recent requests for variances related to electronic message displays. In one instance, the Board denied the request; in the other, the Board granted the request with conditional use restrictions. Mr. LaVenture suggests that the Board receive further input from both the Office of Inspectional Services (Building Dept.) and possibly the Legal Dept. to ensure two things: 1) The Board acted appropriately (not inconsistently) in its granting of the variance in one instance, and a denial in the other. 2) The Board had the authority to grant the variance relief by applying the criteria established under Section 526-12 (Signs – Administration and penalties) to Section 526-13 (Signs- Electronic message center signs; digital display signs.). Mr. Fay drew a distinction between the two cases. In one instance, the applicant, without the appropriate permits, installed video display units in violation of the City's sign ordinance. When the applicant appeared before the Board, the applicant offered no concessions to operate the units in a manner the Board believed was consistent with the intent and purpose of the chapter. In the second circumstance, the applicant applied for the variance in advance of any installation and agreed to numerous operational restrictions. Chair Fenby suggested continuing the discussion at the next meeting and requested the City's Building Commissioner, as zoning authority, or the City's Code Enforcement Officer, attend the next meeting of the Planning Board to offer additional guidance on this interpretation.

10) Unfinished Business

- A. Order No. 19-1007533, Proposed Zoning Amendment-Chapter 650-36- to create the Executive Residential Overlay District. (Simarano Drive and Cedar Hill Road Area). Mirick O'Connell, Attorneys at Law on behalf of Post Road Residential, LLC.

On a motion by Mr. Fay, seconded by Mr. Russ, the Board voted to provide a favorable recommendation to the City Council on the above referenced Council order. Motion carried.

In its decision, the Board had the following comments:

- The developer established that the proposed overlay district would result in a development meeting a demonstrated need for a diversified housing stock in the City of Marlborough;
- The developer established that the proposed overlay district would benefit the City by providing a housing option with a positive fiscal impact to the City of Marlborough;
- The developer established to the Board's satisfaction that the proposed overlay district fits into the neighborhood, and in the Board's opinion, approval of the overlay district for this area would not unduly burden abutters.

The Board expressed their opposition to the applicant's expressed plan to build a phased development.

11) Calendar Updates

- A. **April 29, 2019** Public Hearing Date – City Council Order No. 19-1007587, Section 650-8, "Boundaries Established" Proposed rezoning of Map 113, Parcels 5 and 6, - Land off Williams St.
- B. **April 8, 2019 ANR Vote** East Dudley Heritage Realty Trust, 46 East Dudley St., Marlborough, MA 01752; Engineer, Hancock Associates, 35 Elm St.; Description of Property- Middlesex South Registry of Deeds, Book 54065, Page 211.

12) Public Notices of other Cities & Towns

- A. City of Framingham –2 Notices
- B. Town of Northborough – 1 Notice

On a motion by Mr. Elder, seconded by Mr. Russ, 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

/kih