

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

1A

**Call to Order**

**June 03, 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, George LaVenture, Chris Russ and Matthew Elder. Mr. Fay absent. City Engineer, Thomas DiPersio, City Solicitor, Jason Grossfield, and Planning Board Administrator, Krista Holmi, were also present.

**1. Meeting Minutes**

**A. May 20, 2019**

On a motion by Mr. Russ, seconded by Mr. Elder, the Board voted to approve and file the meeting minutes of May 20, 2019. Mr. LaVenture abstained. Motion carried.

**2. Chair's Business**

- A. Jason Grossfield - Introduction to new City Solicitor and transitional discussion. Solicitor Grossfield introduced himself and shared a bit of his background. In his most recent position, Mr. Grossfield was Assistant City Solicitor in Somerville. Prior to that, he held a position at a Worcester firm where he also dealt with municipal cases. Former Solicitor Rider has been extremely helpful bringing Mr. Grossfield up to speed, and he will continue to assist as necessary to ensure a smooth transition. The Board welcomed Mr. Grossfield and shared thoughts on Planning Board-related issues requiring legal collaboration.

Ms. Fenby recounted the Board's efforts in support of a Home Rule Petition to provide a mechanism to accept roadways in the City. Numerous subdivision roads remain private for various reasons, and the Home Rule Petition, if adopted, could facilitate the acceptance process. City Engineer DiPersio explained that accepting these roadways as public ways increases the City's Chapter 90 allocation. Chapter 90 funds are state allocations for capital improvements such as roadway construction, preservation and improvement projects.

Recent sign ordinance cases before the Board demonstrate that reworking certain sections of the ordinance is necessary. Mr. Elder explained that one current regulation prohibits the use of two colors to signify regular and diesel fuel pricing. The ordinance also does not allow for the use of contemporary point of sale transactional screens or price displays on pumps without requesting variances from the Board.

Code Enforcement Officer Wilderman was also present with Building Commissioner Cooke. Ms. Wilderman mentioned that the Supreme Court decision on off premises signs has affected the enforcement of current sign regulations.

Ms. Fenby also shared that in the past two years, there has been a proliferation of proposed zoning amendments before the Board. Many proposed amendments have been introduced by developers. These zoning amendments are a departure from the typical workload of the Board, whose work previously centered on subdivision control. Legal advice is often necessary to assist in interpretation of the amendments and to ensure that the City's and public interests are being served.

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

**4. Public Hearings**

- A. Communication from Solicitor Grossfield – Proposed Zoning Amendment – Home Office and Contractor/Landscape Contractor Storage yards. Changes to Zoning Amendment to clarify some language pertaining to "home offices". On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the correspondence. Motion carried.

As time allowed prior to the joint public hearing, (Item 4B) Building Commissioner, Jeff Cooke, and Code Enforcement Officer Wilderman remained to answer any questions on the proposed zoning amendment. Mr. LaVenture questioned item (h) on page 3 of the proposed ordinance. *A home office shall not store excessive quantities of flammable, combustible or dangerous substances...* Mr. Cooke explained that applicable codes referenced in the section provide further clarity on allowances and regulations. (Building and Fire codes provide the basis for regulation.) Mr. LaVenture also asked for the significance of the January 27, 1969 date in establishing the “Grandfathering” date for legal pre-existing non-conforming uses or structures. Mr. Cooke and Ms. Wilderman explained that in 1969, there were significant changes made to the Marlborough Zoning Code. This date was used as the baseline for grandfathering. Mr. LaVenture asked for the definition of expansion or alteration of any legal pre-existing nonconforming use as described in the grandfathering section. Mr. Cooke stated that an alteration could be a change to the building such as an expansion or a change to the surface of the lot.

Mr. Russ commented that many storage yards may be operated by tenants and not owners. Who is the responsible party? Ms. Wilderman explained that the property owners are ultimately responsible for property maintenance and compliance. Mr. Russ also asked about item (6) on page 4 of the proposed ordinance: *All vehicles, equipment and/or materials associated with the storage yard must be stored on and accessed from impervious and otherwise dust-free surfaces.* Are there any drainage concerns associated with this item? Ms. Wilderman and Mr. Cooke explained that impervious surfaces provide some containment to potential contaminants from the storage area. Mr. Cooke described one site (103 Mechanic St.) which contained as many as 84 unregistered vehicles. Impervious materials provide protection against soil and water contamination from oil and other hazardous materials leaking from vehicles and stored items.

Mr. Elder asked whether the Building Dept. issues business certificates for home offices or occupations. Ms. Wilderman indicated that they have been holding off until the regulations are finalized. Ms. Fenby expressed concern that some people may be unfamiliar with the Site Plan Review process. She believes the City should provide some support to applicants. Mr. LaVenture asked why Feb. 11, 2019 was selected as the cutoff date for imposing restrictions on storage yards in proximity to existing residential zoning districts and abutting residential lots. This was the date of the first public hearing on the proposed zoning amendment. Mr. LaVenture asked about the cost of fines or penalties. Ms. Wilderman stated that under certain circumstances, fines can reach \$300/day. She stressed that the intent is not to be a fine collector, but to encourage prompt corrective actions. If necessary, she will appear at show cause hearings. The department maintains files on sites and some files detail an extensive history of violations. The Building Department recently added a full-time position. Ethan (Lippitt) divides his time between building inspection and code enforcement, but he has been spending most of his time on enforcement. Ms. Wilderman detailed the extensive follow-up required by Code Enforcement on 26 recent complaints.

In the few minutes remaining before the 8:00 p.m. joint public hearing in City Council Chambers, Chair Fenby requested that the remaining agenda items be addressed.

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

### **A. Berlin Farms – Release of Tri-Partite Agreement (Recording)**

At the May 6, 2019 Planning Board meeting, the Board voted on and signed the release of the Tri-Partite Agreement for the Berlin Farms Subdivision. The proof of recording was provided for informational purposes. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the correspondence. Motion carried.

## **6. Preliminary/Open Space /Limited Development Subdivision Submissions / Updates (None)**

## **7. Definitive Subdivision Submissions / Updates (None)**

**8. Signs (None)**

**9. Informal Discussion (None)**

**11. Calendar Updates (None)**

**12. Public Notices of other Cities & Towns**

A. City of Framingham – 5 Notices

B. Town of Southborough – 4 Notices

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file. Carried.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board recessed to participate in the Joint Public Hearing in City Council Chambers. Motion carried.

**4. Public Hearings**

- B. Joint Public Hearing: 8:00 p.m. City Council Chambers: Council Order 18/19-1007500D – Proposed Zoning Amendment to Section 650-5, entitled "Definitions; word usage," Amendment of definitions - Home Occupation, Outdoor Storage; new definitions- Contractor, Contractor's Storage Yard, Home Office. Landscape Contractor's Storage Yard; Amendment of Section 650-17, entitled "Table of Uses"; Amendment of Section 650-18 entitled, "Conditions for Uses".

City Council President Clancy opened the City Council public hearing.

Chairperson Fenby opened the Planning Board public hearing. The public hearing notice was read into the record. President Clancy provided instructions to those in attendance. The hearing was conducted in the following stages: 1) Presentation 2) Those speaking in favor 3) Questions and Comments from the public 4) Those speaking in opposition 5) Question and Comments from the Council/Board

**Presentation:**

Building Commissioner, Jeff Cooke, explained the necessity of the ordinance. Currently, contractor storage yards and landscape contractor storage yards are not defined uses in the City Code; By section 650-16B, all uses not noted in § 650-17, entitled "Table of Uses," shall be deemed prohibited. The proposed ordinance will allow for these uses and provide for responsible regulation. Code Enforcement Officer Wilderman used a PowerPoint presentation to represent numerous areas around the City that are currently in violation of City code. The slides were used to demonstrate the need for the legislation. Examples included contractors disposing of job refuse on their residential properties, storage of barrels of hazardous materials in yards, multiple parked business vehicles and trailers in residential neighborhoods, etc. The ordinance (in part) is designed to protect resident investments and maintain the character and quality of life in residential neighborhoods.

**Speaking in Favor:**

In addition to Mr. Cooke and Ms. Wilderman, Mayor Vigeant spoke in favor on the proposed zoning amendment. Mayor Vigeant says that the currently presented ordinance is the result of a four-month effort with considerable committee discussion and feedback. He and Councilor Delano are working to protect residents. Some businesses are operating without proper zoning. The ordinance will put necessary restrictions and guidelines in place, and the zoning will protect neighborhoods. He also showed several slides- one illustrating the use of dumpsters in a residential setting containing roofing contractor debris. He mentioned that the Council will be looking at rezoning 3-4 areas on South Street and Farm Road to make zoning consistent with uses. He is looking forward to working with councilors and contractors. Mayor Vigeant stated that it is time for the City Councilors to act. Councilor Delano next spoke in favor. As Chair of the Urban Affairs Committee, Mr. Delano brought this issue to the floor on behalf of the Mayor. He restated that current Marlborough zoning does not allow contractor/landscape contractor yards. There are choices. Businesses that do not meet zoning can either shut down or find alternate locations or accept rational rules.

The process has been simplified, a grandfather clause was also added. He also mentioned extending zones on South Street to make the zoning consistent with use. He acknowledged Councilor Robey and her input and said that Marlborough modeled its ordinance after the Town of Ashland's. He believes the ordinance will restore pride in the city and increase residential property values.

#### **Questions from the Public:**

Jean Rabelo of 765 Boston Post Road (Post Road Auto Parts). Ms. Rabelo was concerned that storage yards are not allowed in business zones. She also characterized her business as an automotive recycler and auto sales business, not an automotive junkyard. Mayor Vigeant suggested that the business could be considered grandfathered. He said that much of the discussion around town and concerns are a result of misinformation.

Toure Foster of 36 Bolton St. operates as a landscape contractor at 278A West Main St. He believes he is a pre-existing nonconforming use. If outdoor lots are disallowed, who will be grandfathered? Councilor Delano stated that some businesses pre-date zoning. The 1969 date was selected since that is the date that zoning underwent a major change.

Patrick Mauro of 379 South St. His family has been operating CMS since June of 1969, and he has a special permit to operate his business in a residential zone. He wondered what would happen to that status should he decide to sell or pass the business on to his heirs. Ms. Wilderman indicated that the special permit would run with the land.

Victor Archila of VMA Electric (81 Maple St.) moved from Elm St. into a business zone. What affect will this ordinance have on his business? Ms. Wilderman indicated there are no current issues there. Mayor Vigeant addressed the room stating that the purpose of the hearing is not to address the specific effect on every property. The properties should work with the City's Building Department. This is not the forum to address individual property issues, because there is the possibility of people leaving with inaccurate information, since there isn't time to evaluate each property's circumstance.

Jerry Dumais of 6 High St. asked for the definition of a contractor. Mr. Delano stated that the ordinance has been in review for numerous months and contains the definitions of contractor and landscape contractor storage yards. He suggested that Mr. Dumais read an available copy of the ordinance.

Charles Trombetta of 42 Whispering Brook Rd. currently leases space to contractors at his location at 655 Farm Rd. He wondered where people are going to park their equipment if they are prohibited from using the residential neighborhoods. Mr. Delano stated that it will be the responsibility of the business owner to locate space. The City's proposed regulations are to protect the residential neighborhoods and keep homes from looking like businesses or storage yards. Council President Clancy interjected that the ordinance is written to allow for such uses in both Limited Industrial and the Commercial Automotive Zones.

Laura Barasamian rents space at 655 Farm Rd. She wondered whether the City had considered the hardship that these regulations pose for business owners? Marlborough has a long history with established, hardworking businesses and thinks that these regulations will be harmful.

Laura Bovaconti of 66 Farm Rd. questioned the number of commercial vehicles allowed at a home office. She asked if further consideration could be given to allowing two commercial vehicles.

Gina DiMatteo of 721 Farm Road said that the ordinance had gone through a change, and that Item 2 (Section 48 (a)(2)) indicates that a storage yard, if created after February 11, 2019, shall not be located on any lot if a residential use is being made of any abutting lot(s). She wondered whether there was any research done to see how many existing contractor storage yards could be affected by this section. Mr. Delano reiterated that the City wishes to maintain residential neighborhoods, and the ordinance is designed to protect active residential uses. Ms. DiMatteo asked the following question. "Haven't I lost my rights to use my limited industrial property? The ordinance once said within 200', but now it is zero feet." Councilor Delano said that using the property for contractor storage yards was never an allowed use, so there was no loss of rights. Councilor Robey was supportive of Ms. DiMatteo's point since a previous version of the ordinance allowed a 200' buffer between storage yards and residential uses.

Peter Olszowski of 169 Essex St. asked as a concerned resident.

If these uses are illegal, what is the statute of limitations (for enforcement)? Building Commissioner Cooke stated that structures have either six or ten-year protection, but illegal uses are never grandfathered. Mr. Olszowski asked why the uses are not allowed if no one is complaining and the properties are neat. Mr. Delano said that neighbors don't like conflict and will not complain in order to maintain positive relationships with their neighbors. People deserve to live in residential neighborhoods without having to contend with looking at their neighbor's junk. Mr. Delano said that people need to follow rules. The regulations are not designed to hurt small businesses. As elected city officials, it is their responsibility to serve the community.

#### **Speaking in Opposition:**

Charles Butler wished to voice his opposition. He has two commercial vehicles and a trailer that he parks at his residence. His property is on French Hill, and he argues that it is well maintained and neat. He believes that the City is throwing a blanket over small businesses. He said that the City should be doing a better job of enforcement. Contractors are not the only issue in the City. There are worse things than having two commercial vehicles. Allowing only one vehicle is too prohibitive.

Melanie Lowery agreed with Mr. Butler. She hopes the ordinance goes back to allowing two commercial vehicles. She doesn't see a problem if the truck/trucks are housed in a garage with a trailer. Small landscapers cannot afford rent without increasing prices to their clients. She wondered whether any economic impact studies were done.

Toure Foster of 36 Bolton St. is in favor of responsible regulations, but feels this ordinance goes too far. Many local business owners take pride in their properties, help neighbors, respect their neighborhood, make no noise and operate clean businesses. He doesn't want the city to "regulate businesses to death". Land costs and site development costs are too high. Will clients be willing to pay more for their services? He doesn't want the city pushing businesses to the point where they can't pay their bills.

Michael Lowery stated that he doesn't care if the Council takes four years to work out the ordinance details. Four months may seem like a lot of time, but there are still things to sort out.

Charles Trombetta expressed his opposition to the impervious surface requirement. He has a two-acre contractor parking area. To pave all two acres would be impossible.

Joe Bovacanti of 66 Farm Rd. spoke in opposition to the one commercial vehicle limitation.

Dennis O'Rourke of 24 Stevens St. rents space at 729 Farm Rd. He is also opposed to the ordinance.

Donald Bishop of 100 Violetwood also rents from Mr. Trombetta. He is opposed to the one commercial vehicle limit. He thinks there is value in sitting down with the city to brainstorm and fine tune the ordinance.

Paul Ditullio of 274 Brigham St. is opposed to the impervious surface requirement. He said that years ago he was specifically told to leave areas unpaved to allow groundwater recharge.

President Clancy closed that portion of the hearing.

#### **Questions and Comments from Councilors/Members:**

Ms. Robey offered her thanks for the work dedicated to the ordinance over the past four months. She said the ordinance was very good until changes were made on April 9. Specifically, only one commercial vehicle was allowed (not two) and there were also changes made to limit storage yards that may be adjacent to residential uses. Why can outdoor storage be allowed by right in certain instances and prohibited in others? Mr. Cooke responded that outdoor storage is regulated by section 650-41. In a home office, residential use is primary.

Mr. Oram wondered what is the next step? Will the proposed amendment go back to Urban affairs? He would like to see a map showing potential impact areas in the Limited Industrial and Commercial Automotive zones. He wondered whether the controls in place for in-law apartments could provide guidelines for these uses. He would also like to see garage options for vehicles.

With no further comment, President Clancy closed this portion of the public hearing. The City Council meeting went into recess to allow the Planning Board to return to their meeting.

## 10. Unfinished Business

- A. Council Order 18/19-1007500D – Proposed Zoning Amendment to Section 650-5, entitled “Definitions; word usage,” Amendment of definitions - Home Occupation, Outdoor Storage; new definitions- Contractor, Contractor’s Storage Yard, Home Office. Landscape Contractor’s Storage Yard; Amendment of Section 650-17, entitled “Table of Uses”; Amendment of Section 650-18 entitled, “Conditions for Uses”.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board reopened the Planning Board meeting and began its discussion following the joint public hearing:

The Planning Board took the following action regarding Council Order No. 18/19-1007500D Proposed Zoning Amendment, Home Offices and Contractor and Landscaper Storage Yards:

On a motion by Mr. Elder seconded by Mr. LaVenture, the Board voted to make a favorable recommendation to the City Council on the above referenced zoning amendment with the following comments:

- The Planning Board hopes that the Urban Affairs Committee will meet and consider the input and feedback expressed at this evening’s public hearing.
- Reconsider allowing two commercial vehicles for home offices.
- Any restrictions on commercial vehicles should apply only to those stored outside and not to garaged vehicles and trailers.
- Reconsider the impervious surface requirement by seeking the advice of the Conservation Officer and/or Engineering.
- Should the impervious surface requirement be retained, consider allowing additional time for compliance.
- Delete paragraph III. b. 48 a. 2 restrictions on commercial storage lots abutting residential uses.
- Site Plan Review should be considerate of the needs and limitations of small business owners to meet the regulations, with the hope of keeping the businesses in Marlborough.

Motion carried.

The comments above were incorporated into a letter from Chair Fenby, and the letter was delivered to City Council President Clancy and members.

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