

## **Minutes of the Planning Board Meeting of October 25, 2016**

Pursuant to a notice filed with the Town Clerk, the Planning Board met at 7:00 p.m. on 10/25/16 in the First Floor Meeting Room, 141 Keyes Road, Concord, MA.

Present:

Brooke Whiting Cash  
John Cratsley  
John Canally (arrived 7:20 p.m.)  
Rob Easton  
Matt Johnson  
Allen Sayegh

Absent:

Gary Kleiman

Elizabeth Hughes, Town Planner  
Marcia Rasmussen, Director, Dept. of Planning & Land Management  
Nancy Hausherr, Administrative Assistant

The meeting commenced at 7:00 p.m. and was audio-recorded. Chair Whiting Cash announced to the audience that anyone recording the meeting should inform her.

### **Minutes**

The minutes of the 9/27/16 meeting were reviewed and amended. Mr. Sayegh moved that the Board approve the minutes as amended. Mr. Johnson seconded. All **VOTED** in favor.

The minutes of the 10/4/16 meeting were reviewed. Mr. Sayegh moved that the Board approve the minutes as written. Mr. Johnson seconded. All **VOTED** in favor.

### **2017 Annual Town Meeting Potential Zoning Bylaw Amendment**

Robert Sepucha, Chair of the Zoning Board of Appeals (ZBA), Building Commissioner John Minty, and Local Inspector Laurie Livoli were present to discuss potential amendments to the Zoning Bylaw to ease and simplify how the floor area of a residence is measured under Section 6.2.13 maximum floor area ratio (FAR) and Section 7.1.5 for nonconforming single and two-family residential structures. The Board considered the Town Planner's memorandum dated 10/4/16 based on the Board's previous discussions.

Chair Whiting Cash started by saying that one of the potential amendments under consideration is an attempt to address the concerns that the measurement of gross floor area of nonconforming structures under Section 7.1.5 is different from the way structures are measured for FAR. Mr. Minty and Mrs. Livoli recommended that it is best to measure both in the same way since now building inspectors must take two sets of measurements. Mr. Sepucha said that the ZBA would be supportive of that.

Mr. Sepucha recalled recently an application came before the ZBA that triggered both the FAR and 50% nonconforming increase and observed that applications of this type are confusing to homeowners and difficult for the Board to explain how the two are interrelated. Mr. Sepucha said that the Zoning Board of Appeals cautions the Planning Board to consider unintended consequences of bylaw amendments. Regarding the FAR, he cited the example of a recent ZBA Special Permit application for Nancy Road to exceed FAR that was withdrawn and later a home was built under the maximum FAR ratios as proof that the FAR bylaw can be successful in addressing concerns about mansionization.

Chair Whiting Cash relayed the comments received from Mr. Kleiman who was absent. She said that Mr. Kleiman led the charge on trying to make sure it is clear that the floor area ratio is set at a reasonable level, which should therefore rarely, if ever, require exemptions. He is concerned that if exceptions are granted (by the ZBA) too frequently then there is not much tooth in the bylaw and that while the measurement approach should be harmonized with 7.1.5, the exemption thresholds for the two sections should definitely not be considered in the same way. She commented to Mr. Sepucha that the Planning Board also wonders if the FAR bylaw will be rigorously applied and hopes that it will be not typical for the ZBA to grant relief from the FAR.

Mr. Sepucha said that the ZBA understands the Board's concerns. He suggested that the FAR ratio should be appropriately set but should also allow for the ZBA's discretion. He referred to a recent application for relief to exceed the FAR that involved a small one-story 25 s.f. addition to a pre-existing non-conforming structure; clearly not a case of mansionization. In that case, he said, the ZBA was comfortable granting relief.

Mr. Johnson asked Mr. Sepucha if the ZBA feels there are any other hot-button issues that should be addressed by zoning bylaw amendments. Mr. Sepucha replied there were no others.

Mr. Johnson asked how the ZBA feels about a tree preservation bylaw. Mr. Sepucha replied that often the Board will urge developers and homeowners to preserve trees but noted they are suggestions only and he worries that a zoning bylaw of that type could turn into a landscape policing mechanism. Ms. Whiting Cash said that the Board determined, in past discussions, they would prefer any tree bylaw to be a Town bylaw rather than a zoning bylaw. Mr. Minty asked who would be responsible for enforcement, if it were a Town bylaw. The Chair noted that was still something to be considered.

Mr. Johnson explained the Planning Board is considering an amendment that implements a time limit on those who receive a Special Permit from the Board of Appeals to expand a nonconforming structure by more than 50% of gross floor area to five years before they could apply for additional expansion. Mr. Sepucha agreed that would be beneficial.

### **Tree Preservation Bylaw Discussion**

Discussion next turned to a potential tree preservation bylaw. Included in the Board's packets were comments from Ms. Whiting Cash and Mr. Johnson on the two bylaw options presented by the Tree Preservation Subcommittee (TreePS). Mr. Minty asked what group enforces the

existing tree bylaws in the Towns considered as models, Wellesley and Lexington. Ms. Whiting Cash said that information is not known but that Wellesley's tree bylaw is a better model to consider. Mr. Canally expressed concerns about the fiscal and administrative burdens that a tree preservation bylaw could create.

Mr. Sayegh commented that the Tree Preservation Subcommittee did a wonderful job in creating the report for the Board's consideration. He opined however, that it is very difficult to quantify the quality of trees. He suggested that enacting form-based code could be a better way to address concerns about tree preservation and mansionization.

Mr. Cratsley opined that it would be a lot of work to get the suggested Option 1 in proper bylaw form for consideration at Town Meeting.

After further discussion, the Board asked Town Planner Hughes to prepare a redline draft version of the tree preservation bylaw for consideration at a future meeting. Mr. Canally suggested that it would be helpful to check with the Town of Wellesley to ask how the implementation of their recent bylaw has impacted staff.

Chair Whiting Cash asked for comments from the audience.

Tanya Barteveyan Gailus, a member of TreePS, asked if the public could receive the two Board members written comments. She opined that she appreciates a holistic approach. She asked that the Board also consider Town trees and Town projects that impact trees. She urged the Board to go forward with a Tree Preservation Bylaw.

Ms. Christa Collins, member of TreePS, seconded Ms. Gailus' comments.

Mark Gailus, 62 Prescott Road, stressed that is it important to identify significant trees.

Mr. Sayegh suggested that geographical information systems could be used to identify significant trees.

**Preliminary Subdivision Plan #241**  
**Keuka Road, Hosmer Meadow Subdivision**

Ian Rubin, of Markey & Rubin, Inc., Attorney Matthew Watsky, and Craig and Hope Beckman, appeared before the Board to discuss the application of Keuka Road LLC for a Preliminary Subdivision Plan "Hosmer Meadow Subdivision" to allow a road improvement with waivers for a 5-lot subdivision for the future development of 11 dwelling units on 12.48 acres off Keuka Road.

The Board considered a letter dated 10/7/16 from the Applicant's attorney; a letter dated the 10/21/16 from Town Counsel in response the 10/7/16 letter; and a letter dated 10/25/16 from Sherrill Gould, authorizing Stephen Marsh to act as her agent and to speak on her behalf regarding her property on Keuka Road.

Attorney Watsky, referred to Town Counsel's letter, and explained where the disagreement lies. He explained that the Applicant intends to file a Planned Residential Special Permit application with the Zoning Board of Appeals and that the intent of the preliminary subdivision plan filing is to improve the existing right-of-way. He explained that the application for Keuka Road is not subject to the Board's review as a subdivision as defined by the Subdivision Control Law and M.G.L. Ch. 41, Section 81L.

Town Planner Hughes referred to Town Counsel letter and the Planning Board's request for clarification on the application of Subdivision Control Law, M.G.L. Ch. 41, Sections 81K to 81GG to the proposed development of Keuka Road. She explained that, as stated in the second paragraph of the letter, "the plans submitted for Keuka Road go beyond showing roadway improvements and show roadway improvements outside the layout of Keuka Road, suggesting that they are preliminary subdivision plans." She also referred to the last sentence of the same paragraph and the third paragraph which contains Counsel's opinion that "it appears there is no existing frontage for the applicant's property along a way within the meaning of the Bylaw." (see Section 1.3.11)

Chair Whiting Cash expressed concerns that the Board is trying to understand the application as a Preliminary Subdivision Plan when it shows a Planned Residential Development layout. She asked if a Definitive Subdivision plan were to be approved and then a subsequent PRD special permit was denied, what would be the status of the approved lots?

Mr. Watsky acknowledged that it is a valid concern, one not yet discussed with his client. Yet, he urged the Board to consider the complete "parallel" package, that the roadway improvement would not be "happening in a vacuum" but as part of an overall development plan that would result in a PRD and to get to that point the Keuka Road has to be improved and the mechanism for doing that is a definitive subdivision plan approval.

Mr. Rubin presented revised preliminary subdivision plan sheets 1 – 4 dated 10/25/16. Town Planner Hughes asked that the Applicant submit copies for the file and the Board. Mr. Rubin explained that revisions to the plan include the incorporation of three additional retaining walls along the northern side of the road right-of-way so that all of the walls are less than 4 feet high, grading that does not extend off the Applicant's property, and a change in the turning radii at the end of the roadway. The Applicant's representatives explained that the roadway improvements are within the layout of Keuka Road only and the improvements at the terminus of Keuka Road will be a private driveway.

The Board discussed how it would be helpful to better understand the blending of the PRD and preliminary and definitive subdivision development, and whether the two can run parallel since without the improved frontage, the PRD cannot move forward. Town Planner Hughes explained the Board's concerns since a typical PRD would establish safe access with adequate frontage under subdivision control laws as part of a decision on a subdivision development, prior to a parallel PRD process. Mr. Easton commented that just because a development has not been presented this way before it does not mean that it cannot be done this way and clarification from Town Counsel would be helpful.

The Board discussed the revisions to the plans and requested the Applicant submit a revised list of the anticipated subdivision waivers.

Ms. Whiting Cash asked how the stormwater management will be handled by paving the road. Mr. Rubin explained the plans are not fully engineered and he will design the stormwater to meet the Town requirements as part of the PRD. Town Planner Hughes clarified concerns raised by the Town Engineer regarding the adequacy of the stormwater drainage even for the roadway.

The Board will seek further clarification from Town Council and will look to receive responses from Town Staff regarding the revised plans dated 10/25/16.

Mr. Easton questioned whether there were any other tasks the Applicant needed to do between now and getting a further opinion from Town Council. Ms. Hughes stated that the Applicant had not gone through the original Town Planner's report and responded to the list of comments from the other Town Departments.

Chair Whiting Cash asked for comments from the audience.

Stephen Marsh, speaking on behalf of Sherrill Gould, said that Ms. Gould is not opposed to the development, but wants to preserve access to her property and the plans indicate that a retaining wall would be in the way of that access.

Derek Brown, who said he represents, abutter Bryna Watson, expressed concern about the potential flow of stormwater onto 760 Main Street. Chair Whiting Cash replied that stormwater is required to not increase flow or rate off site post-development.

Gerard Soucy, 770 Main Street, spoke in opposition to the application.

Pamela Van de Houten, 808 Main Street, spoke in opposition to the application.

Robert Schulman, 680 Main Street, spoke in opposition to the application.

Mr. Easton asked if the fee owner of the other end of the road is here before the Board. Mr. Watsky replied no.

Cheryl Petrone, 734 Main Street, spoke in opposition to the application.

Mr. Schulman, 680 Main Street, said that it is his understanding that ownership ends at the edge of the road.

The Applicant submitted a time extension request form dated 10/25/16 to grant an additional extension to the original 45-day time period to 12/14/16 for the Planning Board to file its decision with the Town Clerk on the Keuka Road Preliminary Subdivision Plan Application. The original document will be filed with the Town Clerk on 10/26/16.

Chair Whiting Cash recapped that the Board will be seeking additional clarification from Town Counsel, and responses will be expected from the Applicant. Discussion of this matter will continue at the 11/15/16 Planning Board meeting unless the Applicant informs the Board that they wish to continue to the 12/13/16 meeting.

**Approval Not Required Plan #16-11  
221 & 265 Ball's Hill Road**

Town Planner Hughes presented the plan to the Board. She explained that the plan shows the boundary of one lot (Parcel 1374-2) with frontage on Ball's Hill Road and the division of one lot (Parcel 1376-1) into one lot with frontage on Ball's Hill Road and three parcels labeled "Not Legal Building Lots" located in the Residence AA Zoning District.

After discussion, Mr. Canally moved that the Board endorse the plan of land dated 10/17/16 prepared by Stamski & McNary, Inc. for 221 & 265 Ball's Hill Road as Approval Under Subdivision Control Not Required because each lot shown on the plan has at least 80 feet of frontage on a public way, Ball's Hill Road. Mr. Johnson seconded. All **VOTED** in favor.

**Committee Liaison Reports & Staff Updates**

Mr. Cratsley informed the Board that the Community Preservation Act Committee will hold a public hearing on 11/14/16 at the Willard School.

Director Rasmussen reported that the Public Works Commission will hold a public information meeting on 11/9/16 at 7:20 p.m. at 141 Keyes Road to discuss the 2016 Design Update for the Cambridge Turnpike Improvement Project. She reported that MassDOT will hold a public hearing at 7:00 p.m. on 11/17/16 to discuss the 25% design plans for the proposed Bruce Freeman Rail Trail Phase 2B, which will connect the trail in Acton to the trail in Concord.

**Comprehensive Long Range Plan Update & Discussion**

This discussion will occur at a future Planning Board meeting.

List of documents presented which are on file in the Planning Division Office at 141 Keyes Road, Concord, MA:

- Proposed Tree Bylaw comments B. Whiting Cash
- Proposed Tree Bylaw comments M. Johnson
- Town Planner's memorandum dated 10/4/16 re: non-conforming structures
- Letter dated 10/25/16 from Gould Law Office re: Stephen Marsh & Keuka Road
- Letter dated 10/21/16 from Anderson & Kreiger re: Keuka Road
- Letter dated 10/7/16 from Matthew Watsky, Attorney at Law, re: Keuka Road
- Revised preliminary subdivision plan sheets 1 – 4 dated 10/25/16 prepared by Markey & Rubin, Inc. re: Keuka Road

The meeting adjourned at 9:25 p.m.

Respectfully submitted,

Rob Easton, Clerk Pro tem