

Minutes of the Planning Board Meeting of June 11, 2019

Pursuant to a notice filed with the Town Clerk, the Planning Board met at 7:00 p.m. on June 11, 2019 in the First Floor meeting room at 141 Keyes Road, Concord, MA.

Present:

Matt Johnson

Kristen Ferguson

Nathan Bosdet

Burton Flint (until 8:15 p.m.)

Kate McEneaney

Allan Sayegh

Elizabeth Hughes, Town Planner

The meeting commenced at 7:00 p.m. and was audio-recorded and videotaped for the Minuteman Media Network. Mr. Johnson requested that anyone else recording the meeting should inform the Board.

The Board welcomed new member Kate McEneaney.

Tree Bylaw Implementation Discussion

The Board met with Building Commissioner Ray Matte; Local Inspector Ed Mullen; and the Town's Reviewing Agent, Elizabeth McKinley of Davey Resource Group, Inc., for an update on the implementation of the Tree Preservation Bylaw over the past year and to discuss issues, concerns, and recommended changes to the Bylaw and/or Rules & Regulations.

Mr. Mullen and Mr. Matte commented on their concerns about staff time and enforcement. Mr. Mullen explained that researching a tree complaint is very time extensive and that it should be handled by the tree review agent.

Ms. McKinley suggested that offering outreach and a planting class to developers could be helpful to increase awareness of the Bylaw and the steps that contractors need to take to ensure compliance with the Bylaw. She commented that two areas of concern in particular are making sure that property owners and contractors install the correct metal, anchored protective fencing prior to the tree review agent's review visit to the property; and that property owners are not engaging a certified arborist to correctly identify potential protected trees and/or invasive (non-protected) trees.

Mr. Matte explained the constraints on his staff, the inspection timeline, and lack of verification by a certified arborist for absence of protected tree affidavits received and the building permit process.

Town Planner Hughes commented on the practicality of enforcement and the cost of verification. She suggested that funding is necessary if requirements change. She reminded the Board about

the long term budget process. She commented that overall the enactment has come with a steep learning curve and that this Bylaw has been one of the most challenging to implement.

Chair Johnson asked for public comment.

Pete Funkhouser, 266 Main Street, a member of the former Tree Preservation Subcommittee, thanked the Board for their efforts and suggested that the Board repeat discussion one year from now to reassess the Bylaw.

Tanya Gailus, 62 Prescott Road, commented that she and her husband have noticed that the Tree Bylaw is making a difference and preserving trees that might not have been otherwise preserved. She opined that invasive tree species should also be protected or replaced if removed. She opined that the Bylaw does not exclude PRD project so they should have to meet the requirements of the Bylaw.

Mark Gailus, 62 Prescott Road, thanked the Board for having this discussion. He suggested that the Rules and Regulations should be amended to include specifically that anchored fencing (not temporary snow-type fencing) is required. He commented that Town Counsel should weigh in on the question of whether or not the Tree Bylaw applies to Planned Residential developments; they just need Town Staff to request the opinion.

Stephan Bader, 7 River Street, suggested that education about the Tree Bylaw is necessary for real estate agents and brokers too. Town Planner Hughes explained the outreach efforts that were undertaken to inform that group.

Jonathan Smith, 66 Upland Road, said that he and his wife have observed and researched recent projects in their neighborhood and claimed that false affidavits have been filed by Applicants in five out of five instances that they researched. He stated that they have filed complaints. He asked what is the recourse for false claims. He was glad that there was discussion about obtaining the services of certified arborists and landscape architects. He said that it was upsetting to not find a single project (that he and his wife looked at) where tree protection fencing was done correctly for the duration of the project.

Tanya Gailus, 62 Prescott Road, opined that it is important to ascertain whether or not the Tree Preservation Bylaw pertains to Planned Residential Development special permit applications.

Karen Jourdenais, 66 Upland Road, applauded the Town for enacting the Bylaw and for those that created the supporting documents. She suggested that the Town should institute fines for submitting a false "Absence of Protected Trees Affidavit". Building Commissioner Matte explained that the focus is always on compliance first before fines. He explained that in general zoning enforcement complaints are handled by issuing an enforcement letter in which the property owner has thirty days to comply and that the issuance of fines is a rarity.

The Board decided to revisit this topic in one year's time; in the meantime, find out if there is a way to fund the cost for the Town's review agent to verify for absence of protected tree affidavits; and focus on education and enforcement to get better compliance.

Recommendation to the Zoning Board of Appeals
Special Permit and Site Plan Review
185 Fitchburg Turnpike

The Applicant, Charles Audi, and Daniel Gannon E.I.T. of Stamski & McNary, Inc., appeared before the Board to discuss the application for a Special Permit and Site Plan Review under Sections 7.1.2, 11.6, and 11.8 of the Zoning Bylaw to extend a non-conforming use and to allow for the construction of a 1,056 sq. ft. canopy over the existing gas pumps box at 185 Fitchburg Turnpike, Parcel 3437-2.

The Board considered the Planner's Report dated 5/2/19; an email sent 5/3/19 from resident Sue Felshin with comments, and a letter dated 6/7/19 from Stamski & McNary, Inc. in response to staff comments contained in the aforementioned Planner's Report.

The Chair opened discussion on the Special Permit application. Mr. Gannon, the engineer for the Applicant gave a presentation on the proposed project. He presented site plan and lighting plan sheets. He explained that the Applicant is no longer proposing a cashier's box. He explained that the maximum foot candle level for the proposed lighting is 20 foot candles. Mr. Gannon explained that Title V testing for the existing septic system failed and that the Applicant is working on a redesign of the system. He pointed out the location of the proposed system on the plan.

Mr. Johnson asked if trees or landscaping is proposed. Mr. Gannon replied that no landscaping is proposed.

Ms. Ferguson asked about the purpose of the proposed canopy. Mr. Audi explained that the intent is to create better working conditions for staff by having a cover during inclement and winter weather.

Mr. Johnson asked for comment from the audience and there was none.

Mr. Johnson moved to recommend that the Zoning Board of Appeals grant the Special Permit subject to a review of the revised plans by Town staff and any recommended conditions. Mr. Bosdet seconded the motion with all voting in favor.

(Mr. Flint left the meeting at 8:15 pm.)

Housing Initiatives Discussion

The Board reviewed the Accessory Dwelling Units Key Questions document and made specific modifications to the accessory dwelling provisions in Zoning Bylaw Section 4.2.2.2. The Town Planner will amend this document so that it can be used as a template for a proposed Bylaw amendment.

Approval Not Required Plan #19-10, 2160 Main Street, Lemonais Development Co.

The Town Planner reviewed for the Board the location of the property, the Residence B Zoning District requirements and the proposed lot dimensions. She stated that the Applicant had provided a conceptual site plan for a proposed driveway to serve Lot 2, which the Engineering Division reviewed and believes that a Driveway Approach Permit could be issued with conditions to address potential runoff onto Main Street. Ms. Hughes discussed the Applicant's intention was to subsequently file for a common driveway special permit to extend the existing driveway instead of constructing the new driveway off Main Street.

Mr. Flint moved to endorse the plan for Lemonais Development Co. at 2160 Main Street (Parcel 2326-2-1) by Stamski & McNary, Inc. dated May 20, 2019 as Approval Not Required because the division of the tract of land shown on the plan is not a "subdivision" because every lot shown on the Plan has the required area and frontage on an adequate public way as required by the Concord Zoning Bylaw and authorized the Chair, Clerk or Town Planner to endorse the Plan. Ms. Ferguson seconded the motion with all voting in favor.

Approval Not Required Plan, #19-11, 166, 238, 242 Main Street, Concord Academy

The Town Planner reviewed for the Board the location of the properties acquired by Concord Academy and the intent of the plan was to combine the two lots with the main campus by removing the interior lot lines.

Ms. Ferguson moved to endorse the plan for Concord Academy at 166, 238 and 242 Main Street (Parcels 1706, 1710-1, 1710-2) dated June 6, 2019 as Approval Not Required because the plan is not a "subdivision" because it does not show a division of land and authorized the Chair, Clerk or Town Planner to endorse the Plan. Mr. Bosdet seconded the motion with all voting in favor.

Election of Officers & Board Liaison Appointments

Mr. Flint nominated Mr. Johnson as Chair until 5/31/19. Ms. Ferguson seconded with all voting in favor.

Mr. Flint nominated Ms. Ferguson as Vice-Chair until 5/31/19. Mr. Sayegh seconded with all voting in favor.

Ms. Ferguson nominated Mr. Flint as Clerk until 5/31/19. Mr. Bosdet seconded with all voting in favor.

Mr. Bosdet nominated Ms. McEaney as the Planning Board's liaison to HATS. Ms. Ferguson seconded with all voting in favor.

Mr. Sayegh nominated Mr. Johnson as the Planning Board's liaison to WCAC. Ms. Ferguson seconded with all voting in favor.

Public Comment

Tanya Gailus, 62 Prescott Road, asked if there was going to be a joint meeting the Zoning Board of Appeals. The Chair replied yes there would be a joint meeting with the ZBA to discuss proposed Zoning Bylaw amendments. Ms. Gailus commented on the Comprehensive Long Range Plan Committee meetings and statements made by some of the CLRPC members who were not in support of additional community growth.

Select Board member Ms. Escobedo complimented the Board on the recent article in the Concord Journal and suggested it be reprinted to help get the word out.

Stephan Bader, 7 River Street, commented that he believes there should be different rules for the conversion of an existing structure to an accessory dwelling and the construction of a new accessory dwelling.

Mark Gailus, 62 Prescott Road, suggested that the Board consider potential unintended consequence and possible loop holes in the circumstance of the conversion of existing structure to an accessory dwelling. He used the example of the construction of a detached garage which is then allowed to be converted to an accessory dwelling after a few years.

The Chair adjourned the meeting at 9:45 pm.

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

- Planner's Report dated 5/2/19
- An email sent 5/3/19 from resident S. Felshin with comments
- A letter dated 6/7/19 from Stamski & McNary, Inc.

Respectfully submitted,

Burton Flint, Clerk

Minutes approved on: 7/9/19