

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
October 15, 2020
Remote meeting**

On October 15, 2020, the Zoning Board held a remote meeting. It was called to order by Chairman Olivieri at 7:02. LakeCam was recording, and it was streaming on Facebook Live.

Members present:

John Olivieri, Jr., Chair; Jeffrey Youngquist; Vice-Chair, Nora Cline, Clerk; Gerry Noble, Vice-Clerk; Chris Carmichael, Member; Christopher Campeau, Associate; Christopher Sheedy, Associate

Also present:

Atty. Amy Kwesell, Michael and Maureen Martowska, Bill and Mary Tribou, Kevin Huerth, Jamie Bissonnette, from Zenith Consulting Engineers (ZCE), Atty. Michael O'Shaughnessy, David Morrissey, Mallory Reis, Paul Turner

Agenda item #1

Mr. Olivieri read this item into the record. It was an explanation of the Governor's Order Suspending Certain Provisions of the Open Meeting Law related to the 2020 novel Coronavirus outbreak emergency which was why the Board was meeting remotely.

Martowska hearing, continued - 2 Edgewater Drive

Mr. Olivieri opened the continued Martowska hearing at 7:02. He advised that they had received an email earlier today from Ms. Martowska requesting the hearing be continued. He then read the email into the record. Therefore, they would not get into any other information besides voting on the continuance. He then asked for a motion.

Mr. Carmichael made a motion, seconded by Mr. Noble, to continue the Martowska hearing until November 19, 2020, at 7:00 p.m.

Roll Call Vote: Mr. Noble-Aye, Ms. Cline-Aye, Mr. Carmichael-Aye, Mr. Sheedy-Aye, Mr. Olivieri – Aye

The hearing closed at 7:05.

Poillucci hearing – 39 Cross Street

Mr. Olivieri opened the Poillucci hearing at 7:06 and read the legal ad into the record. Mr. Jamie Bissonnette from ZCE was present. He then shared his screen and displayed the plan. He advised they were in front of the Board tonight with a Special Permit request for three individual residential dwellings. He advised the majority of the property is zoned business but there is small area to the south that is residential. The applicant is requesting to be able to construct single family homes on those three lots. They have approvals from the Planning Board and Conservation. He explained there is a commercial development planned for 5 Harding Street but surrounding this residential area with new houses seems to be a better fit for the neighborhood.

Mr. Olivieri then read the correspondence from the various Town Boards into the record. The October 2, 2020, letter from the Board of Health stated that based on the information that had been provided there was no reason for the Board of Health to recommend denial due to any public health issues. The Planning Board memo of October 9, 2020, recommend approval of the petition. It advised the subdivision had been approved with the condition the lots be used for residential use. Mr. Olivieri then asked Atty. O'Shaughnessy to summarize the letter he had submitted to the Board.

Atty. O'Shaughnessy said as Mr. Bissonnette had said they are seeking a Special Permit to allow three single family dwellings to be constructed in the business zone. Atty. Kwesell wanted to note the application had an error on it. It stated the Special Permit was being sought under 7.4.6 but it should be 7.4.1. This means that the public notice also had an error. She wanted to make it clear to Board members that they were looking at Section 7.4.1. Mr. Olivieri asked if that precluded them from moving forward with this as they knew what the intent was. Atty. Kwesell said that was correct. As long as the intent of what the applicant wanted to do was correct and set forth in the public notice, then the Board is welcome to change the relief requested. The intent was made clear. Atty. O'Shaughnessy's letter was clearly addressing the correct sections of the Zoning By-law.

Atty. O'Shaughnessy continued and advised that the Board has to consider if the advantages of the proposal outweigh any detrimental effects and if those effects on the neighborhood and the environment will not be greater than could be expected from development which could occur if the special permit were denied. Atty. O' explained that right now, they could do a commercial development by right. When they were in front of the Planning Board this was a hot topic of conversation. He believed their decision was contingent upon this being developed as a single-family residential development.

Atty. O'Shaughnessy continued the last consideration was if the applicant has no reasonable alternative available to accomplish this purpose in a manner more compatible with the character of the immediate neighborhood. He noted this all ties together. There is residential development here now. They went through the Planning Board process and

they believe it is consistent with that part of the street and they would ask this Board to grant this permit.

Mr. Olivieri asked if it was correct that access off this would be from Cross Street and that access to the other development would be from Route 44. Mr. Bissonnette said that was correct. Mr. Olivieri asked Board members if they had any questions or comments. Mr. Carmichael asked how close Bella Way was to Harding Street. Mr. Bissonnette replied it was at least several hundred feet. Mr. Carmichael then asked what the buffer was between Bella Way and Harding Street and the proposed commercial property. Mr. Bissonnette replied that a large amount of the property is being put into a conservation restriction. He would estimate between 50% or 60% between the Harding Street and Cross Street portion. Mr. Carmichael said he was concerned with there being enough buffer if they allow these single-family homes between a potential commercial development and the noise. He would prefer that business stay as business but if there is enough buffer and this is a rural neighborhood, he wouldn't have a problem with it.

Mr. Bissonnette then pulled up the plan and shared his screen. He displayed the location of the commercial development in the front, the limits of the property line for Bella Way, and then the dashed line which indicated the limit of work. He advised that line was set in stone based on the endangered species program at Natural Heritage. He stated that what remains in between is woodland. He estimated at least a couple of hundred feet of buffer. Mr. Carmichael asked what the proposed commercial development would be. Mr. Bissonnette replied contractor bays. Mr. Carmichael said that with a couple of hundred feet buffer between the residents and the proposed commercial property, he saw the potential for a conflict with noise and problems for this neighborhood.

Mr. Sheedy said that Mr. Carmichael had brought up a good point. If people are spending a good amount on a new house and there is contractor bay noise going on behind them, that is a legitimate concern and point of consideration. Mr. Bissonnette wanted to point out that the other side of it would be if they put business in these proposed areas which they could do by right, there are more additional, existing homes that will have a noise impact to them. He believed that overall, they had been in favor of a residence over commercial building.

Mr. Sheedy asked if that line precluded them from doing any type of industrial beyond that land. Mr. Bissonnette clarified the property was business and not industrial. He explained that there will be a conservation restriction with property markers put on that line. It will be monitored on a yearly basis to ensure that no encroachments go beyond that line and that will be in perpetuity. That is a hard line that cannot be disturbed. Sheedy asked if they couldn't do residential would that become unusable? Mr. Bissonnette replied that right now these lines for the limits for work have been negotiated with Natural Heritage. If they don't do the residential subdivision here, they go back to the drawing board with them and create new limits. They are looking to lockup a certain percentage of the overall lot. He believed they did have over four acres of approved, disturbed area on the Cross-Street portion they could work with. That could be

commercial buildings in that area. He thought the existing neighbors would prefer residential over commercial.

Mr. Olivieri then asked abutters present if there were any comments or questions. Mr. David Morrissey of 37 Cross Street then spoke. He asked if this parcel was going to stay zoned business. Mr. Olivieri replied that it was currently business and the request for a special permit was to allow them to put residential. Mr. Morrissey asked if it was correct that he heard the Board of Health approved this subdivision. Mr. Olivieri said the Board of Health's purview is to make sure it meets all Board of Health regulations not necessarily zoning. Mr. Morrissey asked as a member of that Board did Mr. Poillucci exclude himself from any of these votes. Mr. Olivieri said that he would have to check with the Board of Health regarding that. He asked if anyone present representing the applicant could speak to that issue.

Mr. Bissonnette replied he was not present at any meeting and was not sure if that was even discussed at a meeting. He explained usually with these Board reviews, including the Planning Board, they do not invite you to attend and it is just something they talk about. If he happens to be at the meeting and sees it on the agenda, he would stay and speak to it but most of the time they do not. Mr. Morrissey noted that they have started to do some work over there. They have gone back and forth with this over a year now. He does not feel that they have been forth coming with information, and the commercial thing has been held over their heads. The work they have started over there has already caused some issues so he would not offer an opinion either way if he wanted residential or commercial. He felt one way at one point, but he was starting to get some discomfort about this whole project.

Mr. Bissonnette responded he believed the work Mr. Morrissey was referring to was silt fence, or turtle fencing. The site is an endangered species habitat and because of that turtle sweeps had to be done by the 15th of October. The fencing was put up in the approved locations and the biologists went out and did the sweeps. As far as excavators or shovels in the ground, they are not doing that. Ms. Mallory Reis an abutter also had some concerns. The first is that traffic is going to be coming from Cross Street and that would affect her property as well as her neighbors. There were chain saws back there cutting down some trees for the turtles and it was very loud. She asked where this traffic is going to come from for this development. If its commercial wouldn't it have to come from Harding Street?

Mr. Bissonnette replied in business zone like that you could have a number of things. With contractor bays, you could have cars in and out but not necessarily tractor trailers or things of that nature. The intended use of the development is bays for electricians, plumbers, etc. This would be a place for their office, vehicles, keep supplies, meet up with their employees, etc. The commercial access is off Route 44 and the residential would be from Cross Street. Mr. Bissonnette stated that traffic generated from three houses should not be a large amount.

Ms. Reis asked if it was correct that if this residential use passes, it has to stay residential or a home occupation that anyone can do would also be allowed. Mr. Bissonnette replied the Zoning Board can put any type of limitation they want to on a Special Permit as long as it is a legal condition. The Planning Board referenced the fact that their approval of the subdivision roadway is only for things that are allowed in a residential use subdivision, such as at home businesses. If they are going back to the commercial aspect, they would have to change the roadway. It would need to be a bigger road, heavier duty, and built for more traffic.

Ms. Reis said that once the trees are taken down and the houses are built, the commercial aspect of this at 200 feet did not have much leeway for noise travel. She asked if something had been put in place to stop that. Mr. Bissonnette replied there will be a vegetated buffer on the back-property lines and at the back of Mr. Morrissey's property line a fence will be constructed. Mr. Olivieri asked that it be confirmed that there was no connection between the proposed three house lot subdivision and the commercial development. Mr. Bissonnette said the nice part of this is they are putting the only connecting area into a conservation restriction so they couldn't even construct one in the future if all goes as it has been planned.

Mr. Olivieri then asked Atty. Kwesell if they could restrict it to residential use and only an at home business. Atty. Kwesell said that was correct, and that was what was requested. The Planning Board has also limited it to residential use. Mr. Olivieri asked if abutters had any additional questions or if there was anyone on Facebook that would like to speak. No one spoke or had questions. Mr. Olivieri asked Mr. Carmichael and Mr. Sheedy who had brought up concerns about residential in the business zone and also the proximity to the development. Did they have any particular issues they wanted to ask of the abutters?

Mr. Carmichael replied that it appeared that more had come to light and because there will only be 200 feet of buffer between the proposed residential and commercial zone, he had a problem with that. In his experience, he has had sound problems between residential and commercial zones that have more than 1,000 feet as a buffer. He sees this as a protentional conflict. Mr. Olivieri said that he understood the concern. He would be more concerned doing this if there were more abutters that were opposed to it. He was familiar with the area, and there are existing homes there now. The neighbors are probably opposed to anything going behind them, as anybody would be, but would they want something like a warehouse instead of a residential subdivision.

Mr. Olivieri asked if there were any outstanding issues from the Planning Board that had been raised but not dealt with. Mr. Bissonnette replied that he was not aware of any outstanding issues. There had been several Planning Board meetings, and he thought they had addressed the majority of them. He has met Ms. Reis on site and walked her property. He has also spoken with Mr. Morrissey several times. He agreed that they don't love the idea of this being developed, but he does believe the residential use is going to have a lesser impact on them than a commercial use.

Mr. Youngquist then made a motion to grant the petition to allow residential use in the business zone and to mirror the decision of the Planning Board.

Atty. Kwesell recommended that motion restrict the Special Permit to residential uses only, rather than mirroring the Planning Board. The Planning Board issued a subdivision approval which is not a Special Permit. There are a lot of other things in that approval which is not their jurisdiction. She would say the Special Permit is limited to three residential dwellings. If something else wants to happen in the future, they would have to come back and have to be able to have another use with a residential dwelling like an accessory structure. Mr. Bissonnette asked if that would include allowed uses in the residential zone like an in-home business. Atty. Kwesell replied yes, whatever happens in the future has to be allowed with a residential dwelling. A Special Permit might be required for that but what they are doing is not limiting that.

Mr. Youngquist amended his motion to include the condition that the Special Permit was limited to three residential dwellings. The motion was seconded by Ms. Cline.

Mr. Carmichael thought the motion should be amended to include additional screening or landscaping on this residential side. Atty. Kwesell advised if it was thought it would make it less detrimental to the neighborhood it was something that would fall into a Special Permit condition. Mr. Olivieri asked Mr. Bissonnette to explain what they currently had in place to address this. Mr. Bissonnette replied right now behind Ms. Reis' house the land is cleared into the applicant's site. The applicant has agreed to re-establish trees and a buffer zone and also to keep a buffer zone that is on the recorded plan. Where they could not provide a vegetated buffer, they have provided a fence. Ms. Reis confirmed this had been agreed to.

Roll Call Vote: Mr. Noble-Aye, Mr. Youngquist-Aye, Ms. Cline-Aye, Mr. Olivieri –Aye
Mr. Carmichael-Nay

Ms. Murray explained the timing of the filings, the appeal period, etc.

The hearing closed at 7:48.

Documents distributed for the hearing:

- Petition packet

- Legal ad

- Board of Health correspondence of October 2, 2020

- Planning Board correspondence of October 9, 2020

Old Field Estates – 44 & 46 Rhode Island Road

Mr. Olivieri advised this was a request to change the Comprehensive Permit for this project, Old Field Estates. He asked Atty. O'Shaughnessy to explain what it was they were asking for. Atty. O'Shaughnessy replied this past June a Comprehensive Permit

was issued for sixteen three-bedroom units in eight duplex style buildings on Rhode Island Road. In the decision, there was a condition that units 1, 5, 7, and 10 would be affordable units. They are asking the Board tonight to allow them to make a small change to the Permit and change unit 7 as affordable to unit 14.

Atty. O'Shaughnessy said in his opinion, this would be a minor modification. Tonight, the Board can vote if they find this is a substantial change or an insubstantial change. If they feel it is substantial, they must go through the public hearing process. He noted there is no difference in the size of the units. The location has changed but they want to do that to spread it out. Mass Housing, the subsidizing agency, did not have a problem with the change. Atty. O'Shaughnessy added the largest difference would be Unit 14, the unit they are seeking as affordable now, has a walk out basement and Unit 7 does not.

Mr. Olivieri said members should have in their packets the layout which shows which units are being moved and where. Although they were moving things around, it did not appear that they were creating anything different than what was there. He asked Board members if they had any comments or questions. Mr. Carmichael asked what the order of construction was. Atty. O'Shaughnessy was unsure of the sequence but stated that one out of four units built is affordable. Mr. Campeau asked what the primary driver was behind the switch. Atty. O'Shaughnessy said this proposed change would spread out the affordable units more than what is currently approved.

Atty. Kwesell wanted to point out that Unit 14 is now on Rhode Island Road. They are taking a unit off of the cul-de-sac and putting it on a Main Road. Atty. O'Shaughnessy said that was correct, and to offset that location there will be a walk out basement. Atty. Kwesell said prior to this change from Unit 11 to Unit 16 none were affordable so there was not one affordable on that whole side of the project. She noted that she had come in at the end of the project and didn't recall this. Atty. O'Shaughnessy then went through the plan and the affordable units. Atty. Kwesell said that by moving this affordable they are distributing them more but they now have two affordable units on Rhode Island Road. Atty. O'Shaughnessy said that was correct. If that was a concern, they could switch Unit 1 and Unit 2.

Mr. Olivieri asked what Board members thought about that. Mr. Carmichael said he thought Atty. Kwesell was correct and they should switch Unit 1 and Unit 2. Ms. Cline agreed. Atty. O'Shaughnessy then asked Mr. Turner if he would be okay with that switch. Mr. Turner said he would like to point out that there are four units on Rhode Island Road. Two of them do face Rhode Island Road but Unit 14 and Lot 1 are on the subdivision road.

Mr. Olivieri said their decision tonight was if the request was substantial or not. Mr. Carmichael asked Mr. Turner if he would consider switching Unit 13 to affordable. Mr. Turner replied that he was not open to that option. Ms. Cline said as she read the requirements for insubstantial or substantial, and whether they flip or don't flip, she did not view this as a substantial change where more hearings would be required. Atty. Kwesell said that according to the regulations this did not seem to be a substantial

modification. She had only pointed it out because she was curious whether Mass Housing had noticed the same thing. When you are driving into Old Field Way, the first two are the affordable units. Usually, they like to see them spread out. She continued that things that are substantial are, for example, an increase of 10% or more in bedrooms, a decrease in units, but in her opinion, this did not seem to fall into anything considered substantial under the 40B regulations.

Atty. O'Shaughnessy then read the email from Mass Housing. Atty. Kwesell asked if they had seen the plan. Atty. O'Shaughnessy replied he believed that he had provided the plan to them. He noted that they are still in the final approval process so Mass Housing would get a second cut at it, if they did have an objection. Mr. Olivieri said that he had seen the email, and that he would agree with Ms. Cline that this was not a substantial change requiring more hearings. Mr. Olivieri then asked if anyone else would like to speak.

There was a question in the chat from Sharon Dennis who asked why did it matter where the affordable units were. Mr. Olivieri replied that it was required by the regulations that they be distributed evenly. He said if there was nothing further, he would ask for a motion to consider the change insubstantial.

Mr. Youngquist made that motion. It was seconded by Mr. Noble.

Roll Call Vote: Mr. Noble-Aye, Mr. Youngquist-Aye, Ms. Cline-Aye, Mr. Carmichael-Aye, Mr. Olivieri – Aye

Documents distributed:

Atty. Michael O'Shaughnessy correspondence of September 25, 2020
Old Field Estates plan revised plan of September 16, 2020
Old Field Estates original Decision

Meeting minutes

Mr. Olivieri asked Atty. Kwesell what the process was for the minutes from the meetings of the prior Board. She replied it was a ministerial vote. She would prefer a person that attended the meeting make the motion, and the second if it is possible. The rest of it is just confirming, from the people that were there, that the minutes are accurate. Ms. Murray advised the minutes were not available. She had mistakenly put the wrong date on the agenda but would have them available for their next meeting.

Mr. Carmichael then made a motion, seconded by Mr. Youngquist, to adjourn the meeting.

Roll Call Vote: Mr. Noble-Aye, Mr. Youngquist-Aye, Ms. Cline-Aye, Mr. Carmichael-Aye, Mr. Olivieri – Aye

Meeting adjourned at 8:07.