



Town of Westminster

MASSACHUSETTS 01473
FROM THE OFFICE OF THE
PLANNING BOARD
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Jon Wyman, chairman

Marie N. Auger, vice chairman

Michael Fortin

Andrew Rice

MINUTES OF REGULAR MEETING

Tuesday, April 26, 2016

Room 222, Town Hall

Attendees: Marie Auger, Mike Fortin, Andrew Rice, Town Planner Stephen Wallace

Absent: Jon Wyman (vacation)

Additional Attendees: Mr. Chris Mossman / Trowbridge Eng., Mr. Gene LeBlanc / Lead the Way Development, Ms. Linda Wiest,

7:00 p.m.

Marie opened the Planning Board meeting and informed those present the meeting was being audio recorded.

7:00 p.m. - *Minutes*

There were no April 12, 2016 meeting minutes available to approve. Mike told the Board he had them done and apologized for forgetting to send them out. Mike told the Board they would be sent later that night.

7:02 p.m. - *Preliminary consultation regarding a potential Approval Not Required (ANR) plan for Eugene LeBlanc & Priscilla Harrington (Trustees of Worcester Road Realty Trust), reconfiguring the lot lines of three existing lots to create two new building lots on Worcester Road.*

Marie asked the proponent to describe the plan. Stephen told the Board he had been uncomfortable to accept the plan until the PB had reviewed it. Marie asked what the proposed plan was intending to replace. (What plan.) Mr. Chris Mossman presented a plan that showed the existing homes on three lots, and the new proposed lot lines. Mr. Mossman told the Board that Mr. LeBlanc had a purchase and sales option to buy additional land owned by Ms. Priscilla Harrington and another two lots owned by the Harrington Trust. Mike told the Board there had been two plans presented for ANR endorsement since 2010. One in 2010 and another in 2012. Both were recorded at the Registry. The dotted lines shown on the presented plan showed the lines from the 2010 recorded plan. Chris described scenarios previously presented to the PB for a subdivision that would contain two lots. Mr. Mossman asked the Board to focus on lot "B" of the plan. He described the zoning bylaw definition of "Front Yard" stating the front yard extended to a building. Mike read the definition from Chapter 205-2:

YARD

A. FRONT YARD — An open space extending the entire width of a lot from lot side line to lot side line between the front lot line or lines and the nearest point of a building.

Mike pointed out that the ANR endorsement is a separate set of laws (covered under MGL 41) that stand alone and separate from the local zoning bylaws Chapter 205. Endorsement of a plan under the ANR process does not guarantee the lots formed will be "buildable" lots and the Board requires a statement to that effect right on the plans. Marie stated that Planning Boards do not like creating non-buildable lots because those lots create a self imposed hardship by the proponent. Marie told the proponents that the plan being presented would be creating a non-conforming lot with a house already in existence on it. Stephen questioned whether the Board could create a non-conforming lot already built upon.

Mike told the Board that the Planning Board had always pointed out to proponents of ANR plans any self imposed hardships they might be creating. Marie said that often happened with lots containing wetlands crossings and that MGL 41 allows PBs to add notations to plans.

Mike told the Board Marie was correct in stating the PB could add notations to a plan to clarify to future buyers that the lots might not conform to zoning. Mike went on to point out that Chapter 205-10 of the local Zoning states ““No buildings shall be erected or used and no land shall be used or divided unless in conformity with the regulations of this chapter.” Mike felt the plan on the table presented a conundrum and asked whether a proponent of a plan who interpreted the definitions of zoning differently from the PB but knowingly was trying to be creative in their interpretations of the zoning bylaw was somehow in violation of the bylaw which stated the plans needed to be in “conformity” with the bylaw. In the past homes have been built at the rear of lots after a shed was built in the front yard area which allowed it to meet the definition of “a building” under front yard. The definition did not say “primary building”, it just says “a building”. Stephen told the Board he thought this should be corrected. Is the PB required to sign a non-conforming plan in violation of local zoning as “interpreted” by a PB? Mike suggested to the Board that this was a question for Town Council. Mike said he would like Town Council to answer which law trumped which law. Marie pointed out that the plan presented did not even show “a building” in the front yard area of lot “B” under discussion, just a house that would be non-conforming if the lot lines were changed. Marie said the plan presented shows that lot “B” does not conform to zoning.

Mike stated he would not want to endorse a plan that would create a self imposed hardship that might make a building and lot “use” unusable by violating other portions of the zoning bylaw if /when the plan might be recorded. Mike said he would not want Mr. LeBlanc to create a hardship that would make the Town be forced into requiring a building to be vacated or fined each day until it somehow was made to conform again as required by other section of the bylaw. Mike suggested that with many unanswered questions, perhaps the thing to do was to gather the PB questions together with any of the proponents questions and let Town Council interpret what the answers are.

Mike questioned whether three separate owners of property can present lots to be reconfigured under one ANR process. He again stated it was a question for Town Council.

Mike went on to point out that the plan presented was deficient in a number of the Chapter 231 ANR plan requirements:

C. Name and address of owner, subdivider, designer and engineer or surveyor.

D. Names and addresses of all owners of abutting land as they appear in the most recent Town tax list.

F. Boundary lines of all proposed lots or divisions of land, with their areas and dimensions in square feet or acres, and with all of the lots designated numerically in sequence.

G. Names, widths, and status (public or private) of streets and ways shown on the plan.

J. Location of all existing buildings and significant structures, stone walls, easements, cemeteries, public or private burial grounds, rights-of-way, streets, ways, and such other references as are known to the applicant or Board and as shall sufficiently identify the land to which the plan relates.

K. Location of all watercourses and any bodies of water including wetlands as defined by MGL c. 131, § 40, and the local Wetlands Bylaw; [1] the area of the lot outside of the wetlands and the one-hundred-foot buffer zone. [1] Editor's Note: See Ch. 202, Wetlands.

L. Notation stating that "No determination of compliance with zoning requirements has been made or intended."

Mike then went on to note Chapter 205-13-B states: "In addition, *any parcel larger than five acres* may be further divided without process through the Subdivision Control Law,..." The lot "C" being created was not from a parcel more than five acres in size. Lot "C" on the plan consisted of land from three separate parcels of land. Mike pointed out lot "C" showed a circle with a 150 foot diameter shown. Chapter 205-13B B4 states: "There shall be a point on each lot from which a circle having a radius of 100 feet can be drawn without touching any of the opposing lot lines."

Marie said the plan as presented clearly does not comply with the ANR plan requirements and she questions the legality of creating lot "B" with the existing house.

Mike suggested that Town Council answer the following four questions with any that the proponents have before proceeding further with the plan:

- 1) Are ANR plans allowed to be submitted by with multiple owners as the proponent(s) combining lots of land in order to reconfigure lots?
- 2) What is the implication of an owner creating lots in violation of local Chapter 205-10 CONFORMITY REQUIRED "No buildings shall be erected or used and no land shall be used or divided unless in conformity with the regulations of this chapter." Are the owners responsible to follow Chapter 205-10 before following the ANR process outlined in MGL41?
- 3) What happens if there are violations in zoning chapter 205 created as a result of an owner having a plan endorsed and recorded and knowing those violations will be the result of the endorsement. Can the Town move to have the property in violation, (in this case possibly a lot with an existing rental two family home Lot B) vacated because the lot no longer conforms as outlined above in 205-10? Or can the Town move to fine the property in violation each day it remains in violation?
- 4) Chapter 205-13-B states: In addition, *any parcel larger than five acres* may be further divided without process through the Subdivision Control Law, provided that each created lot either conforms with the appropriate land space requirements for that zoning district or the following: B1 Each parcel shall have a minimum of 54 feet of frontage for an access to a Town road, this width to be maintained to the circumference of the radius described in Subsection [B\(4\)](#) below; B2 Each parcel shall contain a minimum of two and one-half (2 1/2) times the land area it would normally require in each zoning district; B3 There shall be no more than two such accesses adjacent to each other; B4 There shall be a point on each lot from which a circle having a radius of 100 feet can be drawn without touching any of the opposing lot lines.

Is the PB correct in interpreting this to mean that the parcel presented for division, in order to qualify, has to be an individual parcel at the time it is divided? Or can multiple lots be included? The bylaw reads *any parcel*, not multiple parcels under different ownerships.

- 5) Question from Chris Mossman: The plan presented shows an existing house #226 at the rear of the property on "Lot B" that may not conform to the FRONT YARD definition in Chapter 205-2 of zoning. Will the addition of a shed set at the 25' front setback line that also meets the side setbacks of 15' qualify as "*a building*" in the definition of FRONT YARD and bring Lot B into Zoning Chapter 205 compliance?

Stephen asked to have a couple of his questions answered also: Is the right of way associated with lot 7 going away? Mike told Stephen that the right of way appeared for the first time on the 2010 ANR plan the board had endorsed. Stephen stated it was shown as a right of way on one plan and then an easement. Marie said it did not matter if it was not fee simple. Mr. Leblanc stated it would go away. Stephen also asked if the lot lines associated with lot 2 and lot 5 were "in contention" and would that be sorted out? Stephen was not comfortable with the PB endorsing land that was in contention and he had contacted Robin Holm at the assessors office to try to gain information to resolve if that was still true .

Marie asked the proponents to first straighten out all the incomplete ANR plan requirements. Stephen said he would work to get the questions and a copy of the plan to Town Council for review. Mr. Mossman stated they would work to have the plan revised.

The Board then discussed changing the definition of Front Yard. Andrew suggested we include the wording "Primary Use Building" to replace "a building" because the intention was never to have an

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accessory use buildings like a shed be in front of the primary use building. Andrew went on to say that the PB should add notes to a plan (to alert future purchasers in situations like this plan).

7:56 p.m. - Review and Comment: ZBA Application for Finding: Montachusett Regional Vocational Technical School, to erect a new structure (veterinary clinic) on a legal nonconforming lot at 216 State Road East.

The Board reviewed the ZBA Application. Marie asked why this application even needs a finding? Stephen told the Board that when the PB took out the wording under the Table of uses Section B-11 (11) Trade, professional or other school conducted as a private business for gain that Mike Gallant interpreted it to mean that Monty Tech was not exempt because it is a school. Mike F. told the Board that Monty Tech is exempt under MGL 40A-3 because it is a public entity school. Marie agreed. After discussion, Mike moved to send a letter of support from the Planning Board and to state the Boards opinion that MGL 40A-3 exempts the new teaching vet clinic from local zoning requirements. The Board voted AIF.

8:01 p.m. - Annual Town Meeting: discussion regarding presentation of zoning amendments.

Stephen asked who was going to ATM. He told the Board he would present the four zoning articles. He showed the Board a slimmed down (from 14 to 8 pages) version of his presentation to Town Meeting. He will also present the Courtney Starling/Community Opportunities Group presentation.

The Board also discussed the property values and potential property tax increases on the land and buildings in the new Village District.

8:09 p.m. - Review monthly progress report on Westminster Business Park earth removal operation. Minor Site Plan Revision for Healing Hills Village Addiction & Recovery LLC, for land located at 9 Village Inn Road.

The Board reviewed the Tetra Tech monthly report and had no questions or comments.

8:12 p.m. Adjourn.

Mike made a motion to adjourn. Andrew seconded. The PB voted AIF to adjourn.

4 Pages of Minutes

Respectfully submitted,

Michael Fortin

5 Attachments :

- 1) Preliminary ANR Plan of Lots Prepared for Eugene R. LeBlanc Trustee of Worcester Road Realty Trust, Priscilla A. Harrington & Priscilla A. Harrington, Trustee of Harrington Living Trust prepared by Edmond J. Boucher. Dated April 16, 2016 1 page.
- 2) Monty Tech - Zoning Board Finding Request for Comments package. 16-03 dated April 5, 2016. 8 Pages. (*Monty Tech finding request 2016.pdf*)
- 3) Town Planner revised/condensed presentation for ATM. 3 pages.
- 4) Tetra Tech Monthly Progress Report for Westminster Business Park. Dated April 14, 2016. 2 Pages. (*2016-04-14 progress.pdf*)
- 5) Tetra Tech Monthly Cumulative Gravel Removal Report for Westminster Business Park. 1 page, no date. (*2016-04-14 YTD Cumulative Gravel Removal.pdf*)

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