



City Of Attleboro, Massachusetts

PLANNING BOARD

GOVERNMENT CENTER, 77 PARK STREET

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MINUTES

MARCH 7, 2022

In accordance with the provisions of the Massachusetts General Laws Ch. 40A and Ch. 41, as amended, the Planning Board held public hearings on Monday, March 7, 2022 at 6:30 p.m. in the Council Chambers on the first floor of City Hall, 77 Park Street, Attleboro, MA , relative to the following :

Planning Board Members Present: Chairman Jason Gittle, Vice Chairwoman Shannon Bénay, Bill Beardwood, Tiffany Foster, Jim Lewis, Thom Morin, Heather Whitehead, and Fred Uriot

Planning Board Members Absent: Sean McNamara

The Board heard the application of One Thirty One Pleasant St, LLC to extend Nicholas Drive for a distance of 120 feet, as shown on the street extension plan entitled "NICHOLAS DRIVE EXTENSION," engineered by John C. Spink, R.P.E. of Spink Design, 59 Clay Street, Middleboro, MA 02346, dated December 29, 2021. The subject premises are located on Assessor's plat #170, Lot #1A in the Single Residence-D zoning district.

Speaking in favor was Bob Catenacci of One Thirty One Pleasant St, LLC who requested to continue the public hearing. He noted that the project is still undergoing stormwater peer review.

Speaking in opposition was Christine Palomba-Smith of 15 Nicholas Drive who stated that she is the one who drafted the previously submitted petition in opposition to the project that had 125 signatures in less than an hour, so much of the neighborhood feels as she does. She stated that when she purchased a lot from Mr. Catenacci seven years ago, Mr. Catenacci informed her, and a number of other home buyers, that there would not be further development in the area, as it is landlocked and there are wetlands nearby. She explained that it has since come to light, based on the statements made by Attorney Jacobi on February 7th, that further development was always part of the plan for the area, as building a home and barn was part of the agreement for the Rocha family to sell Mr. Catenacci the land. She pointed out that Mr. Catenacci's rebuttal letter to their petition claims he had no knowledge of the construction of a farm, however the neighbors confirmed those plans when reviewing the application he submitted to the Rehoboth Zoning Board back in February of 2020. She stated that at the February 28th Planning Board meeting, a Board member advised the opposition to cite grounds under the City's Rules and Regulations for the Subdivision of Land for denial. She explained that in reviewing those standards, she couldn't find grounds for denial of the plan. She argued, however, that just because something can be approved doesn't mean that it should be. She stated her appreciation for the staff's expediency in providing her with materials from the meetings she missed while traveling and Planning Director Gary Ayrassian's willingness to explain the procedures of how the Planning Board operates. She stated that her understanding is that the Board maintains some discretion when evaluating these plans and that it should be under that means, that the proposal be denied. She stated that she understands the Board doesn't regulate land use, but feels that they should consider the intended use as part of the decision-making process. She stated that she respects that one of the Board members asserted the neighbors' concerns to be more of a nature that would be handled by the Zoning Board, but asserted that as the land use will be addressed in Rehoboth, residents of Attleboro will have no say. She asserted that Rehoboth won't entertain their concerns as they are not Rehoboth residents and asked who will look out for the interests of the Attleboro residents in a case like this.

Mr. Ayrassian asserted that despite living in Attleboro, Ms. Palomba-Smith and her neighbors are abutters to the land in question, so have an interest in the matter and officials in the town of Rehoboth are obligated to hear them out. He stated his understanding that Rehoboth officials wouldn't take testimony from non-residents at a prior Zoning Board meeting, but that action is in violation of open meeting law and illegal.

Ms. Palomba-Smith asserted that Mr. Catenacci is extending the roadway to provide the required street frontage to develop the land in Rehoboth.

Mr. Ayrassian noted that the town of Rehoboth may or may not choose to recognize frontage provided in Attleboro, as he wasn't familiar with their regulations regarding buildable land.

Ms. Palomba-Smith stated that according to the City's website, the Planning Board, in addition to administering subdivision regulations, also appears to make decisions and recommendations regarding zoning amendments and rezoning petitions, a fact which she believes should entitle them to consider zoning and land use in this case.

Mr. Ayrassian explained that the Planning Board is only involved in providing a recommendation to the Municipal Council regarding rezoning petitions. He stated that what Mr. Catenacci will potentially be filing with the town of Rehoboth is a zoning petition for a special permit or variance, which isn't the same thing.

Ms. Palomba-Smith stated that she understands that, but she's trying to determine what Boards regulate what. She stated that in this case, the Attleboro Zoning Board has no jurisdiction in the case, but there is a petition before the Planning Board and she asserted it is within their purview to consider the zoning adjacent the street extension, as they are involved with the setting of zones within the City to begin with.

Mr. Ayrassian disagreed and stated that the jurisdiction is with the town of Rehoboth. He stated that the Board could offer opinions or write a letter to Rehoboth, but they have no control over the final outcome.

Ms. Palomba-Smith stated that is her concern, that there is no mechanism to provide the Attleboro residents with a means to oppose this use. She asked that the Board consider how the intended use of this property will impact her and her neighbors' homes and lives. She asserted that the proposed barn is four times the size of the proposed home, which makes it a commercial endeavor. She stated that they anticipate the need for various heavy machinery and vehicles traveling up and down the road to provide upkeep and deliveries to and from the farm, which is a safety hazard. She noted that one of the Board members asserted that Mr. Rocha could start raising 30 cows on the property as things stand now, however, she didn't think that was possible as they require shelter and he cannot construct without the necessary street frontage. She stated that there have been increasing issues with coyotes encroaching into the neighborhood and she is concerned that the proximity of livestock is likely to increase that activity and poses dangers to their children and pets. She stated that they are also concerned about other pests like flies, mosquitos, and vermin, that are likely to be attracted by livestock. She stated that there are dozens of bovine diseases that can be communicated to humans and after COVID, that is a legitimate concern. She stated that she also has contacted the Conservation Commission regarding these concerns, as well. She stated that there are ongoing water concerns with prior phases of this subdivision and the assumed improper grading of land which is likely to be exacerbated by this development. She expressed concerns with residents' tax dollars going to maintain a roadway that services land in Rehoboth and how municipal services will be provided and paid for. She stated that there are grave concerns about the impact of an abutting farm on their property values and their ability to enjoy the use of their own property with the potential for nuisance smells. She stated that should this be approved, they will also have to suffer ongoing construction right outside their doors. She stated that Mr. Catenacci lied to the residents, which is problematic as a contractor, but also a violation of law as the real estate agent. She stated that she understands it is a separate civil issue, but asserted that Mr. Catenacci also lied to the Board when he feigned ignorance about the proposed farm. She stated that this is about protecting her family and that she doesn't want Mr. Catenacci to fail, but that she and her neighbors are fed up. She stated that it is no secret that there are multiple residents from various phases of Mr. Catenacci's development who are actively pursuing litigation against him and that there are ongoing problems. She asked who at the City and at what point gets involved when homeowners are continuously harmed.

Mr. Ayrassian stated that issues have been brought to his attention regarding building code and that those are handled by the Building Inspections Department and will need to be corrected. He stated that utilities and other features will be the jurisdiction of the individual departments involved, like Fire, Water, etc. He stated that there is no regulation in Attleboro that a contractor's license be revoked if he has a maximum number of issues. He stated that complaints filed with City Departments are investigated.

Ms. Palomba-Smith stated that she doesn't want to see Mr. Catenacci go out of business, but that she should be told the truth when signing a contract worth over half a million dollars.

Mr. Ayrassian agreed, but asserted that it is a private, civil matter.

Ms. Palomba-Smith stated that she is fighting to protect her daughter and the 23 other children that live on the street. She asserted that her neighborhood is a thriving community where they host events and are involved with one another's lives.

Chairman Gittle sought to confirm that a farm being constructed would end all of that.

Ms. Palomba-Smith asserted yes, as people will move. She stated that if Mr. Catenacci needs to build Mr. Rocha a home and barn, he should do so in Phase III of the subdivision and that she would have no complaints with that. She stated that this would give her the opportunity to appear before the Attleboro Zoning Board, as Attleboro is not a right-to-farm community like Rehoboth.

Mr. Ayrassian stated that he wasn't familiar with the specifics of a right-to-farm community, but stated that in the City of Attleboro in the SR zoning district, farming is permitted by right, so the matter would not appear before the Zoning Board of Appeals. He suggested Ms. Palomba-Smith come meet with him to discuss processes further.

Speaking in opposition was Christina Corbeil of 91 Richie Road who stated she has lived on Richie Road for 25 years and grew up in Attleboro. She stated that she is concerned with the proposed farm becoming more commercial in nature. She agreed with the concerns about coyotes, as they are very active in the area. She stated that an article she read described cows as commonly vocalizing at night when coyotes are present, so she has concerns about how that has the potential to impact her with nuisance noise. She stated that there are many children in the area she is concerned for. She stated that she has observed the land proposed for the farm is frequently wet and that she has always been told that it is wetlands. She stated that her house experiences flooding and expressed concern with the waste from the cows having the potential to leach into her water or surrounding water sources. She stated that she has read that cows can be fairly destructive and she has concerns with their potential to break loose and roam the neighborhood. She asked how this extension into Rehoboth will benefit the City of Attleboro and its residents.

Chairman Gittle asked whether there is a verified nexus between reduced property values and proximities to farms.

Ms. Corbeil stated that she hasn't researched the matter. She stated that if she was house shopping, she wouldn't want to purchase a home close to a farm. She argued that she didn't see the purpose of the roadway when it has the potential to do so much harm. She stated that the barn that currently exists on the Rocha property is dilapidated and falling down and likely houses vermin. She asked if the building were to be demolished, whether some sort of extermination would be required to occur first.

Mr. Ayrassian stated that the Health Department frequently performs rodent surveys in the City and addresses issues when complaints are filed.

Speaking in opposition was Kerry Montgomery of 76 Richie Road who stated that there is a very big difference between letting a herd of cows roam freely on a property and constructing an entire infrastructure to tend to them 24/7. She stated that there will need to be storage for grain and a manure management system. She stated that many of the neighbors are primarily concerned with the manure

smells and potential for waste to contaminate drinking and ground water with the flooding that the area regularly sees. She reiterated the ongoing issue with coyotes that has become a severe nuisance over the 14 years she's lived at her home. She stated that she didn't know if this was proposed to be a dairy cow operation and if so, it would involve the production of calves, which are extremely vulnerable to predators.

Mr. Ayrassian asked whether Ms. Montgomery has reached out to Mr. Rocha or Mr. Catenacci to arrange a neighborhood meeting to ask their questions about the proposed farm.

Ms. Montgomery stated that she has not.

Mr. Ayrassian suggested she do so. He stated that many of the points raised are valid, but are also speculation. He reiterated that the Board doesn't regulate the use.

Ms. Montgomery stated that she understood his suggestion, but argued that the plans they have seen clearly show a barn, so clearly manure management will be involved.

Mr. Ayrassian asked whether she's reached out to the Board of Public Health or the town of Rehoboth's Health Department, as he imagined there are standards for how such matters are handled.

Ms. Montgomery stated that neighbors want the Board to understand the impacts on the residents as it will be up to them whether or not to grant the road extension. She stated that she understands Mr. Catenacci has the right to develop his land, but that if it is a decision before the Attleboro Planning Board, why doesn't all of the development have to remain within the City. She argued that the Planning Board could opine that the road extension needs to end before the City line, because it is not the Board's job to approve plans with the goal of providing frontage in another municipality. She suggested that the City of Attleboro doesn't owe Mr. Catenacci the right-of-way to access land for development in Rehoboth.

Mr. Ayrassian stated that the Board can give feedback, and has the discretion to make requests, but the developer has the right to propose what he pleases. He stated that the Board can then decide to approve or deny the petition.

Senior Land Use Planner Stephanie Davies stated that even if Mr. Catenacci received approval by reducing the plan to two house lots, he could still Form A the lots to create access to the land in Rehoboth.

Mr. Ayrassian stated that there are a number of ways for Mr. Catenacci to create the necessary frontage.

Ms. Montgomery asked whether the matter is resolved if the Board votes to deny.

Mr. Ayrassian replied no, as the developer will have the opportunity to appeal the decision through due process. He stated that the neighbors will have the same right, should the Board approve the extension. He stated that there are a variety of avenues to take following a denial.

There being no one else to speak, the public hearing was continued.

The Board heard the application of Morin Realty, LLC for Major Project Site Plan Review pursuant to the provisions of §17-15.0 SITE PLAN REVIEW of the ZONING ORDINANCE, for the construction of two single-story additions, 2,980 s.f. and 1,331 s.f., respectively, widening and restructuring of an existing truck loading dock, and reconfiguring an existing parking lot, with associated grading, and redevelopment of the stormwater management system; the subject premises being located at 95 Frank Mossberg Drive, more specifically Assessor's plat #146, lot #6B, located in the Industrial zoning district.

Thom Morin and Jim Lewis recused themselves from the hearing and exited the Council Chambers.

Mr. Ayrassian stated that the Conservation Commission didn't have a quorum to render a decision, but on Thursday night, the Zoning Board of Appeals granted all of the relief requested.

Ms. Davies noted that the Conservation Agent would have recommended approval at the meeting, should a quorum have been had, which was what prompted the Zoning Board to render their decision.

Speaking in favor was Jacob Lemieux of Hancock Associates who stated that minor revisions have been made to the plan at the direction of City staff. He stated that they removed a stairway that projected into the right-of-way, and are proposing to replace two of the catch basins with a new system at the request of Public Works. He requested that the Board consider rendering a decision tonight, as the Conservation Agent is going to recommend approval before the Conservation Commission.

Chairman Gittle asked if there were any major changes to the lighting.

Speaking in favor was Kyle Robinson of Saccoccio and Associates Architects who stated that the existing perimeter lighting will be moved on to the proposed addition.

Chairman Gittle asked about any changes to management of trash or dumpsters.

Mr. Lemieux pointed out the new dumpster pad and enclosure proposed for the site and reviewed the access for the trash trucks.

Ms. Davies noted that there is a typo on the agenda, as the deadline to close should be March 7th per an email that came in after the addendum at the last meeting.

Mr. Ayrassian recommended closing the hearing.

Fred Uriot made a motion to grant a continuance to March 25, 2022. Heather Whitehead seconded the motion and all voted in favor.

There being no one else to speak, the public hearing was closed.

Thom Morin and Jim Lewis returned to the Council Chambers.

The Board heard the application of Bishop Feehan High School for Major Project Site Plan Review pursuant to the provisions of §17-15.0 SITE PLAN REVIEW of the ZONING ORDINANCE, for the construction of an 8,000 s.f. building addition with associated grading, utilities, and stormwater management system; the subject premises being located at 70 Holcott Drive, more specifically Assessor's plat #90, lot #243, located in the Single Residence-B zoning district.

Mr. Ayrassian stated that the Board is awaiting requested materials.

There being no one else to speak, the public hearing was continued.

The Board heard the application of JS Fuller TIC LLC & Etal for Major Project Site Plan Review pursuant to the provisions of §17-15.0 SITE PLAN REVIEW of the ZONING ORDINANCE, for the construction of a 20,000 s.f. warehouse with associated grading, electrical connection, and stormwater management system; the subject premises being located at 50 Fuller Avenue, more specifically Assessor's plat #21, lots #272 and 273, and Assessor's plat #24, lots #43A and 44A, located in the Industrial zoning district.

Ms. Davies stated that the project is still awaiting the approval of their stormwater management permit.

Jim Lewis made a motion to grant a continuance to April 7, 2022. Tiffany Foster seconded the motion and all voted in favor.

There being no one else to speak, the public hearing was continued.

The Board heard the application of NeighborWorks Housing Solutions for a Major Project Site Plan Review pursuant to the provisions of §17-15.0 SITE PLAN REVIEW of the ZONING ORDINANCE, to construct a 4,680± sf building to accommodate an emergency shelter and supportive housing, 20 off-street parking stalls, and associated landscaping, utilities, grading and stormwater management system; the subject premises being located at 150 Pleasant Street, more specifically Assessor's plat #52, lot #52, located in the General Business zoning district.

The Board reviewed the email from attorney Jack Jacobi of Coogan Smith, LLP, on behalf of NeighborWorks Housing Solutions, receiving March 1, 2022, requesting a continuance to March 21, 2022.

Jim Lewis asked whether the project has received stormwater management permit approval.

Ms. Davies answered yes.

Jim Lewis made a motion to grant a continuance to March 21, 2022. Heather Whitehead seconded the motion and all voted in favor.

There being no one else to speak, the public hearing was continued.

The Board heard the application of Anthony Properties for a Major Project Site Plan Review pursuant to the provisions of §17-15.0 SITE PLAN REVIEW of the ZONING ORDINANCE, to construct two new retail/restaurant buildings, ±5,100 sf and ±3,000 sf, respectively, retain the existing ±7,300 sf commercial building, build a new ±10,000 sf daycare facility, and construct 135 parking spaces, as well as associated driveways, landscaping, utilities, grading and stormwater management system; the subject premises being located at 754 Newport Avenue, more specifically Assessor's plat #69, lot #26B, located in the General Business and General Residence-A zoning districts.

The Board reviewed the email from attorney Jack Jacobi of Coogan Smith, LLP, on behalf of Anthony Properties, received March 1, 2022, requesting a continuance to March 21, 2022.

Ms. Davies noted that revised elevations for the daycare center had been submitted.

There being no one else to speak, the public hearing was continued.

The Board held a business meeting.

The Board discussed the application of the Bristol Place Investments LP, 800 Boylston Street, Suite 1300, Boston, MA 02199, relative to the proposed five (5) lot preliminary subdivision plan entitled "Bristol Place Subdivision", said premises being located at 1270 Newport Avenue, engineered by Leonard R. Bradley, Jr., R.P.E. of DiPrete Engineering, 990 Washington Street, Suite 101A, Dedham, MA 02026, dated February 3, 2022, said premises being Assessor's plat #27, lot #4, located in the Planned Highway Business zoning district.

Jim Lewis stated that the plan fundamentally works, and that no problems appear to have arisen with the drainage over the years. He expressed concern with if the Board were to approve the plan, and the developer asks the City to accept it, they would be undertaking the maintenance of a forty plus year old stormwater system.

Ms. Davies stated that the developer intends to keep the roadway private.

Mr. Ayrassian stated that there is no obligation to accept the way, even if that is sought.

The Board scheduled a Subdivision Committee meeting for 5:30 p.m. on March 21, 2022.

There being no one else to speak, the matter was tabled.

The Board discussed the petition of the Municipal Council to amend §17-3.39 PROHIBITED USES of the ZONING ORDINANCE relative to commercial vehicles.

Mr. Ayrassian stated that he met with a representative from the Council Transportation and Ordinance committees, as well as Jim Lewis and Heather Whitehead. He stated that the perspective of the Building Inspector will be sought for certain optics, including his justification for the need of the Ordinance and the comfort level with enforcing it.

Jim Lewis noted that no one on the Board appears to be in favor of this. He stated that he had concerns about the lack of notice and that no one who owns a large truck has any idea that this is happening. He asked what the point of the Ordinance is and he stated that he wasn't sure how defining a commercial vehicle by weight is prudent, as he was unsure how to eyeball the weight of a vehicle. He suggested that many more vehicles could be classified as commercial than anticipated based on these specifications. He stated that grandfathering rights were discussed at the meeting and he pointed out that the definition for a commercial vehicle isn't even in the Zoning Ordinance, but rather Chapter 10, which he finds to be problematic. He asked about RVs and 50-foot trailers and how this will impact those vehicles.

Mr. Ayrassian stated that the statute was followed in regards to notice under Chapter 40A.

Jim Lewis argued that matter is not under the Zoning Ordinance, but rather Chapter 10. He stated that he was concerned that the average person won't know about it.

Mr. Ayrassian asked at what point does one draw the line - the City always applies the required notification radiuses.

Jim Lewis argued that there's no way the average reader is going to understand that their truck is going to become illegal based on the advertisement that was posted, as it is essentially jargon. He stated that there are zoning impacts, but the Board has no input on the definition of commercial vehicle.

Mr. Ayrassian agreed that for consistency, he felt the definition from Chapter 10 should also be included in Chapter 17.

Heather Whitehouse stated that the Council representative agreed that the proposal needs further work.

Chairman Gittle asked whether the Board is ready to provide a recommendation to the Municipal Council.

Heather Whitehead said no.

Mr. Ayrassian emphasized that recommendations to the Council carry weight and the specific votes in favor or against are scrutinized.

Jim Lewis stated that at the Joint Public Hearing the Board was involved with the discussions about changes to the Zoning Ordinance, but they were not involved with the hearing regarding defining commercial vehicles. He stated that if the situation is working satisfactorily now, why change it.

Heather Whitehead stated that it is not working and there are people complaining daily. She stated that the prohibition of commercial vehicles was already in effect, they just hadn't defined commercial vehicles, so there was ambiguity in the enforcement.

Jim Lewis stated that the change will also be impacting people's property rights negatively, which must be considered.

Mr. Ayrassian stated that a commercial vehicle is not customary and incidental to a residential home. He stated his sense that the clarified definition will result in more selective enforcement and narrow the number of vehicles that qualify as commercial vehicles.

Jim Lewis stated that he didn't think a resident should be disallowed their vehicle based on the weight, as some normal trucks could end up classified as commercial vehicles.

Heather Whitehead agreed that the matter needs to be looked at further and there is willingness on the Council-side to revisit the definition.

The Board tabled the matter.

The Board heard the appointment to speak of Monique Medeiros regarding "STONE FIELD ESTATES III."

She stated that she met with Mr. Catenacci last week to discuss the water behind her property and that he agreed there is a large amount there, but that he would be unable to take any action until the spring. She stated that they agreed that he will regrade her property at that time and bury the pipe in question underground to create additional drainage underground.

The Board reviewed the email from Senior Land Use Planner Stephanie Davies, dated February 10, 2022, to Bob Catenacci of One Thirty One Pleasant St, LLC, regarding a notice of violation relative to the "STONE FIELD ESTATES III" subdivision.

Speaking was Bob Catenacci of One thirty One Pleasant Street who stated that they have moved their stockpile about thirty or forty feet away from the existing ponds. He stated that some of the material was used to re-sculpt the temporary basin to better control the water. He stated that they will wait for things to dry out a bit more before working it further, as the machinery was under 3-4 feet of water. He stated that there is no place to move the additional piles and they will be used for re-grading the area, so are needed on site. He asked the procedure in getting approval to leave things as-is. He stated that he is meeting on site with Conservation Agent Nick Wyllie later in the week to review the sediment and erosion controls.

Ms. Davies suggested that he formally submit the colored plan showing the individual stockpiles for official approval.

The Board tabled the email.

The Board reviewed the letter from Daniel Campbell, P.E., of Level Design Group, LLC, dated January 21, 2022 and revised February 18, 2022, to the Planning Board, providing a phasing plan relative to the "PIKE ESTATES" subdivision.

Jim Lewis asked whether staff was satisfied with what was submitted.

Mr. Ayrassian replied no, and stated that he had informed attorney Casey of the deficiencies.

Jim Lewis stated that he didn't want to sign the plans until the staff is satisfied.

Mr. Ayrassian stated that the materials need to show station numbers on the plans to match up with the narrative. He stated that he offered to sit down with attorney Casey to discuss the discrepancies.

The Board tabled the letter.

The Board discussed next steps for the Community Preservation Act.

The Board agreed to review the primer for the matter and to discuss further at an upcoming meeting, in preparation for Chairman Gittle pursuing the matter with the Mayor for his support.

The Board reviewed all other correspondence.

The Board tabled the pending minutes of December 16, 2021, January 3, 2022, January 24, 2022, February 7, 2022 , and February 28, 2022 .

Meeting adjourned at 8:20 p.m.