



City Of Attleboro, Massachusetts

PLANNING BOARD

GOVERNMENT CENTER, 77 PARK STREET

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MINUTES

MARCH 2, 2020

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 2, 2020 at 6:30 p.m. in the Council Chambers , City Hall, 77 Park Street, relative to the following :

Planning Board Members Present: Chairman Paul Danesi, Vice Chairman Jason Gittle, Bert Buckley, Scott Jones, Melinda Kwart, Jim Lewis, and Fred Uriot

Planning Board Members Absent: Secretary Sheryl Guglielmo and Sean McNamara

The Board heard the appointment to speak of Mayor Paul Heroux regarding the proposed amendments to the Local Wetlands Protection Ordinance.

Mayor Heroux stated his vision for a cleaner, greener Attleboro and that constituents are very upset by the amount of clear cutting across the City in the name of development. He stated that he has had numerous residents request that something be done to slow down development and that his preference would be to enact a moratorium on development and not allow one further tree to be lost. He stated that the proposed amendments to the Wetlands Protection Ordinance are a reasonable means to enact constraints on development to the benefit of the environment. He stated that he understands that it is likely to be a strongly contested proposal by developers, but that while campaigning, he knocked on thousands of residents' doors and that loss of green space and development within the City were some of the biggest issues people talked about. He stated that he cannot prioritize developer's profits and that he is supporting development strictly in the downtown, so that Attleboro's green spaces can be preserved. He stated that this is the direction in which he is taking the City and he is looking for the Planning Board to support him.

Jim Lewis stated that he does not agree with the Mayor's approach. He stated that the Wetlands Protection Ordinance was adopted close to 20 years ago and that there was much debate at that time to determine the appropriate distance for the no disturb zone and that 25-feet was determined to be appropriate to protect the wetlands without diminishing private property rights. He stated that he found 75-feet to be an extreme deviance from the current Ordinance. He stated that work within 100-feet of the wetland already requires permitting through the Conservation Commission and he questioned why their jurisdiction and review process would be usurped by instituting bigger no-touch zones. He stated that there is more flexibility for the Conservation Commission to judge things on a case by case basis and that he feels that approach is fairer to land owners in lieu of arbitrarily increasing no-build zones. He stated that the current treatment of vernal pools under the Ordinance deems close to an acre of land as a no-touch zone and that the proposed increase would double that, not even including the expanse of vernal pool itself. He stated his desire to see that portion of the Ordinance reviewed and potentially revised. He stated that he feels the Mayor's proposal is an overreach and that the change will prevent homeowners from even using existing backyards.

Mayor Heroux stated that his father lives at 150 Rocklawn Avenue, so is one of the individuals who will be vastly impacted by the expansion of the no-touch. He stated that a lot has changed in the past 20 years in terms of effects from climate change and that Ordinances need to be reevaluated accordingly. He stated that this proposal is meant to benefit the collective good, which he feels outweighs the negative impacts on the portion of individual land owners who will be affected.

Jim Lewis stated that as an attorney, he has dedicated his life to protecting his clients' property rights, and so doesn't support such a measure.

Mayor Heroux argued that he is the elected official ordained by the public to act for their best interest. He stated that he is simply actualizing the agenda for which the public voted. He stated that Mr. Lewis, and all Board members, are appointed by the Mayor and should accordingly, support his agenda. He stated that it is Mr. Lewis's right as a private citizen to register complaint in that context, however, he does not need to comment in his capacity as a board member. He stated that the Board serves at his discretion and control and that he is taking the City this direction.

Chairman Danesi expressed concern with not understanding how this proposal will impact existing subdivisions and those that have been approved, but have yet to be built. He stated that the Board needs a clear understanding of how the proposal will influence the job they are charged with, as it will clearly impact things. He suggested that guidance from the City Solicitor is likely warranted.

Mayor Heroux asserted that such approaches are taken in many Massachusetts municipalities and that a number have 50-foot or more no-touch buffers for wetlands.

Speaking was Conservation Agent Nick Wyllie who agreed that there are several that have 100-foot no touch zones.

Mayor Heroux reiterated that the Planning Board falls under his administration and that his job is to advocate for the majority, rather than special interest groups. He stated that he hoped the Board would support the measure, but he is not asking members to go against their conscience.

Director of Planning and Development Gary Ayrassian stated that there is a meeting scheduled tomorrow with the City Solicitor to begin the discussion on the implications of such a proposal on how to regulate development. He stated that the question stands that if an expansion is to be adopted, would approved plans on undeveloped land be grandfathered. He stated his opinion that they would not be. He stated that alternatively, a permit that has been issued by the Conservation Commission, but not yet acted upon would be grandfathered. He suggested that existing structures are also likely to be grandfathered.

Chairman Danesi questioned what would happen in the case of an approved subdivision that has posted their bond but had yet to actually construct the roadway or stormwater management systems.

Senior Land Use Planner Stephanie Davies stated that the roadway would be protected if a Conservation Commission permit had been granted, but that the individual house lots could be an issue.

Chairman Danesi suggested that some municipalities utilize Natural Resource Protection Zoning, which allows for trade-offs to be made. He gave the example of if a developer was willing to build a subdivision that preserves a portion as open space, they could negotiate reducing the wetland buffers on the site. He asked whether the Mayor would consider such an approach.

Mayor Heroux indicated he would consider the approach.

Chairman Danesi noted that the Board already does this to some degree with their Open space Residential Developments where they trade off the preservation of larger tracts of land in return for the ability to construct homes on smaller lots, creating density bonuses for the developer.

Mr. Ayrassian agreed, but stated that only two subdivisions to date have been proposed under that program. He stated that there is little interest from developers because they feel that smaller lots are not marketable.

Mayor Heroux reiterated that he is open to ideas from the Boards to achieve his goals. He stressed that his re-election garners him a mandate from the public to take action on his agenda.

Jason Gittle questioned whether there is a general average no-touch buffer afforded by other communities within the Commonwealth. He asked whether 25-feet is considered low in comparison.

Mr. Wyllie replied that the majority are situated around 50-feet, but that some are as high as 100-feet. He stated that these are varied in whether they reflect no build zones, no disturb zones, or a mixture of both. He stated that the City's current Ordinance is below the mean buffer of protection.

Mayor Heroux pointed out the recent plastic bag ban that took effect in the City and how the state as a whole is now taking up that restriction. He noted that the City has recently been designated a Green Community. He stated that the world in general and our City in particular are headed in that direction. He acknowledged that it creates a challenge for developers, but that policies must be implemented that are sustainable for the community as a whole.

Jason Gittle questioned the appropriate process moving forward.

Mayor Heroux stated that the proposal is submitted to the Municipal Council who will deliberate the merits, it will go to Committee and then will come up for a vote.

Scott Jones questioned how homeowners will feel that this change will impact their assessed values for their properties.

Mayor Heroux stated that he was not concerned with diminishing property values for individual landowners. He stated that he is looking at the bigger picture and how the whole world's wellbeing is at stake in regards to climate change. He stated that he feels very strongly about this issue. He noted that at the end of the day, it will be up to the Municipal Council whether the proposal is approved. He argued that other communities have been able to implement measures even stronger than what is proposed without incident. He asserted that the interests of landowners and primarily, developers, is secondary to the health of the environment.

Mr. Ayrassian noted that the City already affords a great deal of flexibility to developers. He noted that some communities require that land be accessed by way of the property's frontage, which is not required in Attleboro. He added that there are also some places that don't allow wetlands to be included in the minimum lot area or require a minimum amount of contiguous upland, neither of which the City requires.

Mr. Wyllie agreed that in the past, the Conservation Commission has allowed for the passive use of existing lawn that falls within the wetland protection zone.

Jim Lewis asked whether the installation of a shed would be precluded.

Mr. Wyllie replied that if the shed was proposed more than 50-feet away from the wetlands, it is exempt under state law. He stated that should the new proposal be adopted, the homeowner would have to file for a Local Wetlands Protection permit. He stated if the Commission deems the construction will not pose a significant adverse impact, like if it is proposed in a grassed area and won't require the removal of trees, it is likely to be approved.

Mr. Ayrassian emphasized that this is just expanding on an already existing regulation and that it will simply increase the Conservation Commission's jurisdiction to review work within the requisite distance of the wetland. He noted that if approved, the change will likely create additional work for the Commission.

Mayor Heroux noted that he had originally proposed 100-feet, but that Mr. Ayrassian and Mr. Wyllie and felt 75-feet to be appropriate. He stated that he defers to their professional perspective on such matters. He emphasized that whether or not the individual Board members agree with this approach, they are not obligated to comment on the proposal. He stated that as private citizens, each member has the right to stand for or against the proposal. He requested that any reservations be made known to him before the matter goes before the Council, so that the proposal can be optimized.

The Board heard the application of Pike Avenue Acquisitions, LLC for the proposed forty-nine (49) lot definitive subdivision plan entitled "PIKE ESTATES," located at 419 Pike Avenue, more specifically Assessor's plat #130, lot #81, located in the Single Residence-D zoning district, engineered by Daniel R. Campbell, R.P.E. of Level Design Group, 249 South Street, Unit 1, Plainville, MA 02762.

Senior Land Use Planner Stephanie Davies reminded the Board that the applicant had continued the public hearing until the Board's second monthly March meeting (scheduled for March 23rd).

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

The Board heard the application of Tian Ann Jih Der Sheng Daw Yuan Temple for a Major Project Site Plan Review pursuant to the provisions of §17-15.0 SITE PLAN REVIEW of the ZONING ORDINANCE, to accommodate the construction of a temple facility consisting of three buildings, paved access drive with sidewalks, a parking lot consisting of 34 off-street parking stalls, landscaped walking paths, and associated grading and stormwater management systems; the subject premises being located at 61 Thurber Avenue, more specifically Assessor's plat #34, lots #5 & 7, located in the Single Residence-B zoning district.

The Board reviewed the Form P1 - request to continue a public hearing submitted by the Tian Ann Temple, received March 2, 2020.

Ms. Davies noted that they are working through some issues with their application before the Conservation Commission.

Mr. Ayrassian questioned whether the Board would like to pursue the previously requested modification to the slope of the driveway where it meets Thurber Ave, even if the Fire Department doesn't have an issue with the current design. He suggested that due to the grades, it would make sense to create a bit of a plateau for the drive as it leads up to an intersection.

Jim Lewis noted that the plan utilizes the site's existing curb cut out to Thurber Avenue, but that a curb cut could technically be placed anywhere along the frontage.

Ms. Davies stated her recollection that there is a guard rail installed along a portion of the frontage.

Jason Gittle stated his desire to see the driveway grade addressed, as the use on site will be seeing significantly more traffic than a typical driveway.

Melinda Kwart made a motion to grant an extension of time to April 27, 2020. Bert Buckley 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 SOWA, LLC for an amendment to the approved Major Project Site Plan Review decision dated July 17, 2018 for "Shops on Washington" to reconfigure the proposed bank, restaurant, and retail buildings; and create new curb-cuts providing right-in only access to the site from Newport Avenue and Route 1A, the subject premises being located at 1 Highland Avenue and 5 Route 1A, more specifically Assessor's plat #64, lots #1A and #1B, located in the General Business zoning district.

Ms. Davies reminded the Board that the applicant had already continued the hearing to the second meeting in March (scheduled for March 23rd).

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

The Board held a business meeting.

The Board discussed the application of John J. & Mary F. Donovan to extend Rambler Road 2-5 feet, as shown on the street extension plan entitled “RAMBLER ROAD EXTENSION,” engineered by Daniel R. Campbell, R.P.E. of Level Design Group, 249 South Street, Unit 1, Plainville, MA 02762, dated March 1, 2018, revised through October 28, 2019. The subject premises are located on Assessor’s plat #123, Lot #8 in the Single Residence-D zoning district.

Ms. Davies informed the Board that staff will have a draft decision for them to review in advance of the March 23rd meeting.

The Board heard the Form A application submitted by Woodlark Development Corp. for Richardson Avenue.

Speaking was Tim Caponigro of Woodlark Development Corp.

Ms. Davies explained that the plan is a land swap regarding two existing lots off of Sparrow Way.

Mr. Caponigro explained that he is conveying land to create a buffer for the resident from the subdivision lots.

Jim Lewis sought to confirm that no new lots are being created and simply parcels are being conveyed.

Ms. Davies agreed and recommended approval.

Jim Lewis made a motion to approve the Form A submitted by Woodlark Development Corp. for Richardson Avenue. Bert Buckley seconded the motion and all voted in favor.

The Board heard the appointment to speak of Mark Rioux relative to the “DEER RUN ESTATES” subdivision.

Mr. Rioux explained that Deer Run Estates was approved with sidewalks on both sides of the roadway. He stated that there are no sidewalks coming up from Lindsey Street and that Pasture Brook Road, Colonial Way, and Pheasant Lane all only have sidewalk on one side of the roadway. He requested permission to install sidewalk on only one side of the roadway out to Lindsey Street on Colt’s Way.

Mr. Ayrassian noted the stub between lots 16 and 17, and asked whether Mr. Rioux anticipates later development on the east side of Deer Run Estates.

Mr. Rioux affirmed at some point in the future.

Mr. Ayrassian suggested it would make more sense to have the sidewalk on the eastern side.

Ms. Davies agreed, as this approach would allow the sidewalk to tie into the next stage of development.

Jim Lewis questioned under what mechanism Mr. Rioux can achieve his goal.

Mr. Ayrassian stated that during an open public hearing, a waiver would be granted relative to the sidewalks. He stated that after the public hearing like this, the Board would technically require the filing of an 81-W plan. He argued, however, that whether the sidewalk is installed or not, there is no alteration of the subdivision’s complexion, so he felt an 81-W was not warranted. He noted that the matter won’t negatively impact stormwater, as it will reduce the amount of impervious, resulting in an overdesigned system. He suggested the matter could be handled by Certificate of Vote once the sidewalk fee for materials is submitted. He noted that Mr. Rioux’s engineer needs to submit a plan showing the changes, from which a sidewalk fee can be produced by Public Works. He explained he can then be afforded 90-days to submit the fee.

Ms. Davies agreed that information needs to be provided on what will replace the sidewalks and the locations of utility poles on that side.

Melinda Kwart sought to confirm that the Board didn't feel abutters need to be notified of the change.

Mr. Ayrassian stated that the abutters to this would be the people living on Colonial Way, Pasturebrook Road, and Pheasant Lane and doubt it will be a concern for them and that there are no abutters to the east or west.

Jim Lewis stated that no lots have been sold in Deer Run Estates. He imagined that the only people who would be aggrieved by the change would be those who bought a home there expecting a sidewalk to be installed. He stated that he didn't see any reason to hold a public hearing on the matter.

The Board reviewed all other correspondence.

The Board approved the draft minutes of February 10, 2020. The Board tabled the pending minutes of February 24, 2020.

The meeting adjourned at 7:45 p.m.