

Maynard Planning Board Meeting
May 26, 2020 – 7:00 p.m.
(Held remotely via Zoom due to COVID-19)

Board Members Present: Greg Tuzzolo – *Chair*; Andrew D’Amour – *Vice Chair (absent at the start of the meeting, joined at approximately 7:24 p.m.)*; Bill Cranshaw; Chris Arsenault; Jim Coleman; Mike Uttley – *Acting Member for first 22 minutes of meeting*

Others Present: Bill Nemser – *Town Planner*; Kaitlin Young – *Assistant Town Planner/Conservation Agent*; Tim Hess – *Town Design Consultant*; Wayne Amico – *Town Engineering Consultant*; Paul Kirchner – *Civil Engineer for 86A Powdermill Road Project*; Derick Veliz – *Architect for MacDonald Development*

Called to Order at 7:02 p.m. by Greg Tuzzolo

Jim Coleman asked to go on record with the following statement: he is opposed to the virtual format for any public hearings of the Planning Board. He believes that it is in the best interest of the public, the Board, and the applicant to be physically present in order to fully participate in an orderly discussion of the material and plans. He cited the 5th amendment’s right for a person’s due process of law.

Greg Tuzzolo stated that Jim Coleman’s statement was noted. Greg Tuzzolo explained that all hearings were paused for several weeks at the discretion of the Board due to COVID-19 restrictions for in-person hearings. The Board had made a determination, after careful consideration, to begin holding hearings virtually. The decision was reviewed by Town Counsel, who determined that it would be a legally valid decision to hold the hearings virtually. Greg Tuzzolo further explained that there are four specific conditions that the Board agreed must be met in order to hold a virtual hearing:

1. Each applicant must consent in writing to hold a virtual hearing
2. A digital moderator will be appointed to ensure that appropriate documents are shown on the screen during the hearing
3. All documents related to the hearing must be made available to the public at least one week prior to the hearing via the BoardDocs platform
4. Physical copies of the hearing materials will be made available to Board members who request them

Approval of Minutes

Jim Coleman made a motion to approve the Minutes dated March 10, 2020 and March 24, 2020, which was seconded by Greg Tuzzolo.

The Board voted 5-0 in favor of the motion.

Determination of Major/Minor Modification – 42 Summer Street

Derek Veliz, architect for MacDonald Development, introduced himself and requested a continuation to June 9, 2020

Greg Tuzzolo made a motion to continue the determination for major/minor modification for 42 Summer Street to June 9, 2020, which was seconded by Andrew D'Amour.

The Board voted 5-0 in favor of the motion.

Bill Cranshaw noted that June 23rd is an election day and should not be an option for continuances.

Public Hearing – 86A Powdermill (continued from May 19, 2020)

Bill Nemser stated that the hearing was continued from May 19 but had been continued prior that date since February. There are two outstanding issues: 1) a question of ownership of the mall, and 2) there have been no revised plans submitted by the applicant for review.

Paul Kirchner, engineer for the project, stated that the site plans have been substantially revised but not yet submitted. They were revised based on feedback from Wayne Amico and VHB as well as input from the applicant. With regard to a discrepancy about an easement on the property, the applicant has been working with the owner of the mall to come to an agreement. The applicant's intent was to not appear before the Board until that issue had been worked out. Paul Kirchner stated that it appears an agreement is close at hand and, once an agreement has been made regarding the easement, the revised plans will be submitted for review. He stated that the applicant and the applicant's attorney know that the issue is pressing and have been working to come to a resolution so that the project can move forward.

Greg Tuzzolo pointed out that when a hearing is advertised, the public, abutters, and the Board are prepared for a discussion, and it is not fair to the interested parties to continue the hearings time and again.

Bill Nemser stated that he spoke with the abutters and they expressed confidence that the issues will be worked out between the applicant and the mall owner.

Jim Coleman reiterated his concerns about continuing the hearing once again as it has already been continued multiple times.

Jim Coleman made a motion to deny the application without prejudice and allow the applicant to come back to the Board when they are fully ready to have their application reviewed and can participate in a hearing. Chris Aresenault seconded the motion.

Greg Tuzzolo asked what the downside to Jim Coleman's motion would be. Bill Nemser stated that the process would start all over again, and the hearing would have to be re-advertised/re-noticed.

Bill Cranshaw noted that the applicant was previously given 90 days to resolve the issues and participate in a hearing but they were unable to do so. He suggested either denying the application or continuing for another 90 days. Chris Arsenault and Mike Uttley both agreed.

Greg Tuzzolo provided Paul Kirchner an opportunity to respond. Paul Kirchner stated that the only reason they requested a continuance was to avoid having site negotiations in a public forum. He also stated that he believes the issue would have been resolved by now had the coronavirus not delayed things. They believed that they were acting upon the recommendations of Town Staff by requesting the continuances until the issues were resolved. Although he could not commit to a resolution within the next two weeks, Paul Kirchner stated that the issue would be resolved and the revised plans submitted by the end of June.

The Board voted 4-1 in favor of the motion. (Greg Tuzzolo voted against.)

Greg Tuzzolo stressed that the denial of the application is without prejudice.

Public Hearing – 115 Main Street (continued from May 19, 2020)

Bill Nemser stated that the last active hearing was just prior to the shutdown from the coronavirus. There have been several iterations of the plans as well as a Staff report, comments from design and engineering reviews, and additional documents. Greg Tuzzolo pointed out that the most current package that will be discussed during the hearing is the one received April 14, 2020.

Greg Tuzzolo asked for an update from the applicant. The applicant's architect, Derek Veliz, stated that he asks for the Board to vote on the project. Greg Tuzzolo stated that he appreciates what the applicant is asking and noted that several actions have taken place in order to move things forward, including the following:

- Town Planner Bill Nemser has drafted a list of conditions
- Town Engineer Wayne Amico has proposed a list of conditions
- Town Planner Bill Nemser has drafted a list of approximately 50 different considerations that the Board needs to review
- A design review of the project with recent dialogue between the design reviewer and the applicant

Greg Tuzzolo asked for comment from the Board. Andrew D'Amour expressed his opposition to a demand for a vote without due process. Bill Cranshaw stated that it's hard to imagine a yes vote for such a complex project with so many outstanding questions. Chris Arsenault stated that he would prefer to keep moving forward with the process. Jim Coleman stated the he believes the applicant is requesting a vote and not demanding one and that the Board should accommodate the request.

Bill Nemser suggested going through the list of conditions and discussing each one. Greg Tuzzolo pointed out that the most recent correspondence from the applicant stated that the applicant is not willing to change drawings, resubmit, or attend any future meetings. He questioned whether it makes sense for the Board to deliberate if the applicant is unwilling to make any additional changes anyway.

Wayne Amico stated that due to the complexity of the project, his team structured three letters of response to the April 14th submittal from the applicant. The letters, dated April 27, addressed the following topics: 1) structural issues related to the retaining wall; 2) environmental issues relative to both the retaining wall and the site as a whole, based on the proximity to the river; 3) a closure statement relative to civil and drainage issues for the project. Wayne Amico noted that all three letters stated that the project can be approved with conditions. He reviewed the conclusions of each of the letters and the related conditions.

Greg Tuzzolo asked Derek Veliz for clarification on whether or not drawings would be revised based on feedback from the Planning Board. Derek Veliz stated that they would make changes as needed, as long as it's fair for the town and the client.

Bill Nemser reviewed the highlights of the Staff Report, including the following criteria which must be met according to the By-laws: 1) special permit criteria; 2) Downtown Overlay District (DOD) criteria; 3) design review criteria. He also briefly reviewed the non-exhaustive draft conditions for approval and further action required.

Kaitlin Young, Conservation Agent, stated that Wayne Amico is also the peer reviewer for the Conservation Commission, which always takes into consideration his comments as well as those of DPW. In addition to being in charge of the Wetlands Protection Act, the Conservation Commission is also the storm water authority in Maynard. Therefore, it's up to the Conservation Commission to approve the storm water management permit for any project that requires one. The conditions and outstanding items related to storm water and proximity to the river are typical items that the Conservation Commission would be reviewing anyway. Wayne Amico concurred and stated that his team looks at the project holistically, but that storm water is ultimately within the purview of the Conservation Commission.

Greg Tuzzolo pointed out that the issues related to the retaining wall were structural issues and not storm water/drainage issues. Kaitlin Young stated that the Conservation Commission would review the feedback and recommendations of Wayne Amico and his team related to the structural integrity of the retaining wall.

Greg Tuzzolo suggested going through the DOD criteria first, as those criteria are more stringent than the special permit criteria. Tim Hess recommended first going through the conclusions of the design review for the benefit of the public. The Board agreed, and Tim Hess went over his design review conclusions. He specifically pointed out apparent conflicts in the drawing sets that were submitted by the applicant as well as concerns regarding the northern end of the promenade where the promenade ends and turns into an "s" shaped path where there is a utility pole and an electrical box currently located. Bill Cranshaw stated that he is not clear on the specifics of the work that's planned on Town property and wants to see greater details for those areas in the plans. Tim Hess detailed additional concerns from his design review, including the amount of paved/parking area, the limited retail focus, and the civic contribution of the project. He read the most recent memos he had sent to the applicant outlining his concerns and suggestions for revisions.

Bill Cranshaw agreed with the concerns about the amount of parking. Bill Nemser pointed out that the DOD has been adopted with the understanding that there will be compromises in terms of parking requirements. He also noted that the DOD allows for a certain level of flexibility with regard to design, as

long as certain criteria are met. There is a goal of increasing density in the downtown area, particularly with affordable units, which is equally important as the other factors being considered. Wayne Amico pointed out that there was an extensive discussion about the parking lot in previous meetings and that the current proposal, though not necessarily ideal, is a safe and reasonable design.

Greg Tuzzolo outlined which of Tim Hess' concerns he feels need to be adequately addressed by the applicant and which ones could be conditioned. He feels that the conflicts in the drawing sets need to be resolved as the submitted drawings will be part of a permanent record on file. Anyone who reviews the file in the future needs to have an accurate set of drawings to refer to. With regard to concerns about the promenade, Greg Tuzzolo stated that he considers the pinch point to be an area of compromise that should be considered in aggregate with all other considerations. With regard to the landscaping, Greg Tuzzolo would like to see some changes made based on feedback from the peer review. He would also like to see more of an effort to mitigate the reduction of the promenade. The final point Greg Tuzzolo made was that he would like to see specs, design material, and colors for the site furnishings as they have not yet been provided as part of the application.

Bill Cranshaw agreed that information about materials that are planned for use along the promenade is critical, especially since future maintenance responsibility has not yet been resolved. He also noted that on sheet C2 of the site plan, it appears as though some of the parking spaces do not function; some of the parking spaces would block others in, making some of the parking unusable simultaneously. Bill Cranshaw also expressed concern about conditioning the connection between the rail trail and the promenade. He would like to see more detailed information about the applicant's intentions along that section of the property. He also pointed out that, with regard to civic contribution, his understanding is that the applicant was offering the promenade in lieu of a contribution to Recreation and Open Space. He questioned whether it's appropriate to consider the promenade as part of the quality of the project design.

Derek Veliz went over the renderings of the proposed project. Bill Cranshaw noted that the electrical box and utility pole are not shown in the renderings. He also asked about the glass and metal "appendage" on the side of the building towards the front and what the intent of it is. It is intended for retail space, and Tim Hess stated that it would be appealing to a small subset of retailers. Derek Veliz stated that all the questions being raised are "little details" that can be worked out in the future. He reiterated the request for a vote.

Greg Tuzzolo stated that he would be willing to continue reviewing the feedback and concerns of Tim Hess (regarding elevations) only if the applicant committed to revising and re-submitting drawings. Derek Veliz confirmed that he is acting on behalf of MacDonald Development and that they would be willing to make changes but he asked again for the Board to vote yes or no on the project. The Board discussed the possibility of voting with conditions. There was also a discussion about the project currently underway at 42 Summer Street, which is also owned by the applicant. Andrew D'Amour noted that the construction taking place at that project is not congruent with the drawings that were approved. Wayne Amico suggested that the Board could conduct proactive inspections of the subject property to ensure that construction is consistent with the plans.

Greg Tuzzolo asked for public comment. There were no comments from the public.

Greg Tuzzolo stated that he does not want to vote at this time. He feels that the applicant is being ambiguous about the intent to make revisions moving forward. He also noted that the current set of drawings was submitted approximately six weeks ago without any progress made on additional revisions based on design review feedback.

Jim Coleman stated that over the past several years, the MacDonalds have replaced some dilapidated buildings in town as well as conducted rehab and improvements on several multi-family dwellings in town. He feels those buildings are well-maintained and are achieving what Maynard's goals are: to offer more housing for residents and employees of Maynard to live, work, and patronize local businesses. Although he feels that the Board will not be able to make a decision during this hearing, he believes that the project will be a benefit to the Town. He wants to encourage the MacDonalds and other developers to work with Maynard to improve the Town. Jim Coleman asked the applicant through their representative, Derek Veliz, to give the Town and the project more time as it is not possible to vote favorably on the project at this time.

Derek Veliz stated once again that the applicant deserves a vote and requested that the Board votes on the project. Greg Tuzzolo noted that it is the Board's discretion as to when they are ready to take a vote. Greg Tuzzolo asked Derek Veliz if he prefers July 14 or July 28 for a continuation of the hearing. Derek Veliz stated that he wants a vote from the Board. Bill Cranshaw asked if the applicant wishes to withdraw the application. Derek Veliz stated that he wants a vote. Greg Tuzzolo reiterated that the Board is not going to take a vote at this time and that the options are to continue the hearing or withdraw the application.

Andrew D'Amour made a motion to adjourn, which was not seconded.

Jim Coleman made a motion to continue the hearing to July 14, 2020, which was seconded by Chris Arsenault.

The Board voted 5-0 in favor of the motion.

Public Hearing – Zoning By-laws Amendment (continued from May 19, 2020)

Greg Tuzzolo opened the Public Hearing to determine a recommendation to Town Meeting on June 13, 2020 for the Zoning By-laws Amendment to change the Board of Selectmen to the gender-neutral term "Select Board" throughout the By-laws. The amendment would make the Planning Board Zoning By-laws consistent with the changes being made to the Town By-laws.

Greg Tuzzolo asked for comments from the Board. Bill Cranshaw expressed concern about the timing. He stated that the upcoming Town Meeting will be a tough one and it might be better to wait for fall Town Meeting.

Chris Arsenault stated that he understands there might be other priorities but does not see any issue with presenting this amendment at the upcoming Town Meeting.

Greg Tuzzolo asked for public comment.

Natalie Robert of 28 Summer Street expressed support of the amendment.

Resident and Selectman Armand Diarbekirian stated that he was the one who proposed the change and that he would like to see it go to Town Meeting on June 13, 2020.

Greg Tuzzolo made a motion for the Planning Board to recommend the adoption of the change to the language from “Board of Selectmen” to the gender-neutral “Select Board”. The motion was seconded by Andrew D’Amour.

The Board voted 4-1 in favor of the motion. (Bill Cranshaw voted against due to the timing of it because of concern of agenda size at the upcoming outdoor town meeting.)

Public Hearing – Planning Board Rules and Regulations (continued from May 19, 2020)

Greg Tuzzolo made a motion to continue the public hearing to July 14, 2020, which was seconded by Jim Coleman.

The Board voted 5-0 in favor of the motion.

Jim Coleman made a motion to adjourn, which was seconded by Andrew D’Amour.

The Board voted 5-0 in favor of the motion.

Adjourned at 9:46 p.m.