



MAYNARD PLANNING BOARD
TOWN BUILDING
195 MAIN STREET
MAYNARD, MA 01754

Minutes: January 11, 2011

Attending: Greg Price (GP), Jason Kreil (JK), Max Lamson (ML), Mike Bingley (MB), Marie Morando (MM), Planner Assistant

Ken Estabrook (KE) – 7:15 pm

Attending for ZBA – Marilyn Messenger (MarilynM), Chair and Lynne Lombardi (LL)
Town Counsel Mark Bobrowski (MarkB)

7:00 pm Steve Fredericks from Corporate McDonald's and Paula Wright franchise owner attended the meeting for a determination if the change that they are proposing is substantial or non-substantial. They are proposing not to install a fence between their property and the property next door on the west side of the property. The owner on the west doesn't mind if there is a fence or not. It will be mixed development and it is proposed as retail on the bottom floor.

They are proposing to put landscaping where the fence would have been.

Paula Wright – the owners didn't feel that a fence is warranted on that part of the property, they have replaced the fence in the back. They would like to put plantings down that side of the land.

MB – what kinds of shrubs and trees are you suggesting? Do you have an updated landscaping plan; he needs more information before he can make a determination.

ML – wants an updated plan

JK – updated planting plan, comparing it the original plan – was it a 6 foot vinyl fence, he would have to see a revised plan showing the changes and detail before he can make a substantial or non-substantial determination.

Steve Frederick – he is only standing in for Tessa Bernstein today because she is in Vermont. He will relay this information to Tessa and she will be in touch with the planning department.

As this was an advertised meeting any other items regarding McDonald's will be discussed under old/new business on the agenda.

7:30 pm Mark Bobrowski – Town Counsel re: review of Zoning bylaws

The following is a copy of the information received by the planning board from town counsel.

TO: Zoning Committee
FR: Mark Bobrowski

RE: Procedural Aspects of the Zoning By-Law

Please consider the following proposals for discussion at our next meeting.

Item 1. Substitute some of the following for existing Sections 1.0 and 13.0 of the Zoning By-Law:

SECTION 1.0 PURPOSE AND AUTHORITY

1.1 PURPOSE. These regulations are enacted to promote the general welfare of the Town, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the town, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited to, the provisions of the Zoning Act, G.L. c. 40A, as amended, Section 2A of 1975 Mass. Acts 808, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

1.2 AUTHORITY. This Zoning By-Law is enacted in accordance with the provisions of the General Laws, Chapter 40A, and any and all amendments thereto, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

1.3 SCOPE. For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.

1.4 APPLICABILITY. All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Zoning By-Law. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. Where the application of this By-Law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-Law shall control.

1.4.1 Applicability; Nonconformities. Except as herein after provided, this Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing on this Bylaw or any amendments thereto, but shall apply to any change or substantial extension of such use, to a building permit or special permit issued after the first notice or said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or a structural change to a single or two family residential structure does not increase the nonconforming nature of said structure.

1.4.2 Commencement of Construction or Operation. Construction or operations under a building permit or special permit shall conform to any subsequent amendments to this Bylaw, unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

1.5 AMENDMENTS. This By-Law may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in G.L. c. 40A, s.5, and any amendments thereto.

1.6 SEPARABILITY. The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision herein.

Item 2. We discussed this briefly last meeting. Substitute the following for existing Section 7.0 of the Zoning By-Law:

NONCONFORMING USES AND STRUCTURES.

1. Applicability. This zoning by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning by-law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.
2. Nonconforming Uses. The Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals: **[pick one or both]**
 - a. Change or substantial extension of the use;
 - b. Change from one nonconforming use to another, less detrimental, nonconforming use.
3. Nonconforming Structures. The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals: **[pick one or both]**
 - a. Reconstructed, extended or structurally changed;
 - b. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent;
4. Variance Required. Except as provided in subsection 5, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance/special permit **[pick one]** from the Board of Appeals.

5. Nonconforming Single and Two Family Residential Structures. Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Inspector that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following circumstances shall not be deemed to increase the nonconforming nature of said structure:

[pick one or all]

- a. alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements,
- b. alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.
- c. alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements.

In the event that the Building Inspector determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

6. Abandonment or Non-Use. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning by-law **[but town can allow reestablishment by special permit]**.

7. Reconstruction after Catastrophe or Demolition. A nonconforming **[any structure or single family structure - pick one or both]** may be reconstructed after a catastrophe or after demolition in accordance with the following provisions:

- a. Reconstruction of said premises shall commence within two years after such catastrophe or demolition.
- b. Building(s) as reconstructed shall be located on the same footprint as the original nonconforming structure, shall be only as great in volume or area as the original nonconforming structure, and shall meet all applicable requirements for yards, setback, and height.

c. In the event that the proposed reconstruction would (a) cause the structure to exceed the volume or area of the original nonconforming structure or (b) exceed applicable requirements for yards, setback, and/or height or (c) cause the structure to be located other than on the original footprint, a special permit shall be required from the Board of Appeals prior to such demolition.

8. Reversion to Nonconformity. No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

Item 3. Substitute some of the following for existing Sections 12.0 and 14.0.

SECTION 10.0 ADMINISTRATION AND PROCEDURES

10.1 BUILDING COMMISSIONER

Existing Sections 12.1 is fine.

10.2 PENALTY

Penalty now allowed by statute is \$300/day.

10.3 BOARD OF APPEALS.

1. Establishment. As set forth in Section 12.3.

Substitute the following for 12.3.1 to 12.3.3:

2. Powers. The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this By-Law. The Board's powers are as follows:

- a. To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority.
- b. To hear and decide appeals or petitions for variances from the terms of this By-Law, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10. **The Board of Appeals shall have the power to grant use variances - discuss.**
- c. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.
- d. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

3. Regulations. The Board of Appeals may adopt rules and regulations for the administration of its powers.

4. Fees. The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

The following section would be new:

10.4 PLANNING BOARD

10.4.1 Establishment. *[Need something from the charter or general by-laws].*

10.4.2 Powers. The Planning Board shall have the following powers:

1. To hear and decide applications for special permits as provided in this By-law, subject to any general or specific rules therein contained and subject to any appropriate conditions and safeguards imposed by the Board.
2. To conduct site plan review pursuant to Section ***.

10.4.3 Rules and Regulations. The Planning Board shall adopt rules and regulations not inconsistent with the provisions of the Zoning By-law for conduct of its business and otherwise carrying out the purposes of said Chapter 40A, and shall file a copy of such rules in the office of the Town Clerk.

10.4.4 Fees. The Planning Board may adopt reasonable administrative fees and technical review fees for applications for special permits and site plan approval.

10.5 SPECIAL PERMITS.

Delete Section 12.4 (keeping Sections 12.44, 12.57, and 12.7) and substitute the following:

1. Special Permit Granting Authority. Unless specifically designated otherwise, the _____ shall act as the Special Permit Granting Authority.
2. Criteria. Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:
 - a. Social, economic, or community needs which are served by the proposal;
 - b. Traffic flow and safety, including parking and loading;

- c. Adequacy of utilities and other public services;
 - d. Neighborhood character and social structures;
 - e. Impacts on the natural environment; and
 - f. Potential fiscal impact, including impact on town services, tax base, and employment.
3. Procedures. An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.

4. Conditions. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-Law.

Keep list in 12.4.4.

5. Plans. Unless otherwise provided the rule or regulation of the special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section [site plan contents], herein.

(The provisions of this Section should not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two family structure. The SPGA should establish procedures governing such applications by regulation.)

6. Regulations. The special permit granting authority may adopt rules and regulations for the administration of this section.

7. Fees. The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

8. Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

Item 4. Regarding **SITE PLAN APPROVAL as **Section 10.5:****

Consider some or all of these standards to be added to 14.4.B:

1. Minimize use of wetlands, steep slopes, floodplains and hilltops;
2. Minimize obstruction of scenic views;
3. Preserve unique natural or historical features;
4. Minimize tree, vegetation and soil removal and grade changes;
5. Maximize open space retention;
6. Screen objectionable features from neighboring properties and roadways.
7. Consideration shall be given to the impacts of the project on town services and infrastructure.
8. Electric, telephone, cable television, gas, water, sewer, drainage and other such utilities shall be underground except in cases of extreme physical and environmental constraints.
9. Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be set back or screened to protect the neighbors and those using public ways from objectionable features. Such areas shall not impede the flow of traffic on public ways.
10. When applicable, the site plan shall show measures to reduce and abate noise generated from the site that will impact surrounding properties.
11. The site plan shall comply with all zoning requirements for parking, loading, signage, dimensions and environmental performance standards and all other provisions of this By-law.
12. The site plan shall be consistent with the objectives of the Comprehensive Plan and other applicable specific plans adopted by the Planning Board.

Add the following provisions at the end of Section 14:

Lapse. Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

Regulations. The Board may adopt reasonable regulations for the administration of site plan review.

Fee. The Board may adopt reasonable administrative fees and technical review fees for site plan review.

Appeal. Any decision of the Planning Board pursuant to this Section shall be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

Went over the citizens petition's – how you would get to Town Meeting.
ZBA – voting: 4 members voting in the affirmative for a variance
 4 members voting in the affirmative for a special permit
 3 members voting in the affirmative for a finding.

MarkB went over each Section with the board and suggested some changes.
Section 6 – time limits
Talked about in the use table were designated – ZBA – SPGA or PB SPGA,

Next scheduled time with MarkB will be 2/22/2011 at 9:00 pm

Old/New Business:

McDonald's Restaurant: in put from the public

Linde Ghere – my daughters were very upset about not having a play gym when we went to McDonald's both daughters submitted a letter to the board, Aurora read the two letters, plus one from a friend.

Lynde Ghere is curious why McDonald's change there minds as to the plans for the play space.

RA – the franchise owner had decided in late November – December that they were not putting a play structure in their play space; the liability is great; they have not finished that part of the building and they were looking at activities that are appropriate for that space.

There are issues with the fence as you know and the signage out front. When the owner decided to put the old "M" instead of the new one it triggered the other sign waivers; they also are looking at a possibility of 30 additional seats; this makes the project non-compliance with parking.

Linde Ghere: she feels that big screen TV'S with CNN is not appropriate for the play space and the installation of video games would not be supportive in town.

Jim Buscemi: 8 Espie Avenue, the franchise owners have been very good owners to the town; have they been formally approached – not yet.

Colleen Fales: they are disappointed that the play space does not have a play structure; there is no where to go in the town that has this type of structure for the children. We know that the town needs recreation outside space, this might not be a solution, but it helps.

KE: we know that there are no play areas outside in the town. It is not the responsibility of McDonald's to make this happen; we are concerned that they told the planning board that they were going to build a play space and this is not what they communicated.

BC – there is a broader need of the community with regards to recreation in the town, BOS and School Committee will address the issue of play space outside for children of Maynard.

DCapello: There are other solutions; Boys and Girls Club.

MB: We were not notified of the changes that McDonald's made and we will bring McDonald's back in and have more public comment. We wanted the height to cover the roof top units, is the space smaller (play space).

JK: there are other issues on the site: signage, play space, the fence; I would like you to invite them to a planning board hearing asap to determine what should be dealt with by the planning board. There seems to be more seating than the original plan.

The following are a list of things the planning board wants to talk to McDonald's about:

1. Fence – substantial or non-substantial change
2. Signage
3. Additional seating
4. play space
5. plantings plan

Please make sure that McDonalds knows to come fully prepared to answer all questions and they have plans.

Please have the Wrights come in with McDonalds corporate.

JK when there are future applications is there any way we could have the landowners come in with the franchise owner.

JK motion to adjourn 10:00 pm

2nd MB

Motion passed 5-0

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Minutes Approved 1/26/2011/signed chair

