

Maynard Planning Board – Meeting and Public Hearing
February 11, 2020 - 7 p.m.
195 Main Street, Soup Campbell Room

Board Members Present: Greg Tuzzolo – Chair, Andrew D’Amour – Vice Chair, Bill Cranshaw, Chris Arsenault, Jim Coleman

Others Present: Bill Nemser – Town Planner; Rick Asmann – Building Commissioner; Wayne Amico – Town Engineering Consultant; Megan Zammuto – Assistant Town Administrator/Executive Director of Office of Municipal Services; Kaitlin Young – Assistant Town Planner; Bob Depietri -- Capital Group Properties (129 Parker Street)

Called to Order at 7:00 p.m. by Greg Tuzzolo

Approval of Minutes

Bill Cranshaw made a motion to approve the Minutes dated December 11, 2019, which was seconded by Andrew D’Amour.

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

Greg Tuzzolo made a motion to approve the Minutes dated January 28, 2020, which was seconded by Andrew D’Amour.

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

Update on Maynard Crossing (129 Parker) from Capital Group Properties (CGP)

Greg Tuzzolo stated that Rick Asmann and CGP were both invited to the meeting to discuss some recent violations of the special permit for the 129 Parker Street/Maynard Crossing project and what the process will be moving forward. Rick Asmann explained that in order to cite a violation, someone with jurisdiction has to see the violation occur. The developer cannot be cited based upon the hearsay of a violation. For some recent violations, neighbors called the police who came to the site and saw the violations. Rick Asmann explained that the Zoning and Building department can utilize a fine that is part of a non-criminal ticketing provision that the Town has adopted. The fine has a limit of \$300 per violation. Following the most recent violation, Town staff members met and agreed that every crew/sub-contractor (not individual) will constitute a new violation. The site contractor was issued a fine for a violation of work being done on a holiday. The fine has been paid.

Rick Asmann referred the Board and attendees to the Massachusetts State Building Code and the options available under that code. Rick Asmann stated that he can order the work to be stopped and that if it is not stopped, he can cite a violation. However, he also pointed out that citations for building

code violations can be appealed and that anyone issued a citation for a code violation is entitled to a 30-day appeal period. He stated that he can suspend a building permit rather than revoke it. However, he feels that the best approach moving forward is to have open communication with the developer. He encouraged the developer to ask for permission for any variances to the terms of the special permit and/or the building code rather than asking for forgiveness after a violation.

Greg Tuzzolo gave Bill Depietri of CGP an opportunity to respond to Rick Asmann's comments. Bill Depietri explained that one violation was unavoidable because the concrete hadn't yet cured so the crew had to work until 8 or 9 p.m. to finish the job. He stated that with regard to work being done on a holiday, there are only certain holidays that are recognized by contractors and that it likely was not on their calendar. He also pointed out that the planned tenants of the building have deadlines for when they expect the buildings to be ready.

Chris Arsenault asked Bill Depietri if any corrective action has been taken on the part of CGP to alleviate the potential for future violations. Bill Depietri stated that CGP has spoken to the sub-contractors about the expectations. Signage has also been put in place on site stating the hours of operation. Bill Depietri stated that because it's winter time and there are still more slabs to be constructed, there will very likely be more early-evening work being done. There will be a written request submitted to ask for permission to extend the hours of operation specifically for pouring the slab concrete.

Greg Tuzzolo suggested that there needs to be a process for handling situations that come up without advanced notice. Bill Cranshaw asked for clarification from Rick Asmann on who would have jurisdiction over violations. Rick Asmann stated that it would be the police, employees from Municipal Services, and potentially other individuals such as Planning Board members (though Rick would have to consult with legal counsel on that). Bill Cranshaw asked how the police would be able to identify the number of violations (e.g. if there are multiple sub-contractors in violation at the same time). Rick Asmann stated that the police have been given a site map and they have been asked to note the specific addresses of each violation they see.

Rick Asmann pointed out that many of the calls that were made regarding violations were related to lights being on too early or too late at the site. He stated that those issues have been resolved. He also reminded the developer that deliveries need to occur within the agreed-upon time frame.

The Board discussed with Rick Asmann the options available, including revoking a building permit, suspending a building permit, and fining the developer. Rick Asmann also suggested the possibility of the Board including language that a developer who is in violation of their special permit would forfeit money from a surety bond. Bill Nemser stated that the verbiage could be included as part of a development agreement or as a condition to a special permit. Bill Nemser stated that he can come up with some ideas that the Board can consider for future projects. He also pointed out that the Board has the option to re-open the special permit hearing process.

Resident Chris DiSilva stated that Martin Luther King Jr. Day is a recognized federal holiday. He also asked who the chief enforcement officer is for violations of a developer. Rick Asmann stated that he would enforce violations of the special permit. The Town would be the enforcer of violations to the Memorandum of Agreement (MOA).

Greg Tuzzolo reiterated that the applicant was invited to the meeting to discuss the violations that have occurred and that the Board has several options available to address violations moving forward. He stated that he understands that the holiday violation was not intentional and that he hopes there will not be any future issues. Bill Cranshaw stated that he disagrees and that he feels that the applicant deliberately violated their agreement.

Resident Michelle Booth of Field Street asked for clarification of the process in the event of a violation. For example, if a violation occurs on a weekend and the police document the violation, who gets notified on Monday morning and what happens next? She also asked how many violations it takes before there's another discussion by the Board. She stated that she has not called the police many times but has witnessed multiple violations, including trucks parked on site overnight, trucks idling, work being done on the residential building on Sunday afternoon, etc. Bill Nemser explained that the police reports go to a number of Town Hall staff members. The Board of Selectmen is also notified. Michelle Booth stated that she calls the construction supervisor directly when there's a violation occurring. Bill Dipietri pointed out that there are multiple developers of the site and that CGP is only responsible for the retail portion, not the residential construction. Rick Asmann stated that construction of the apartment building has been completed. Rick also asked Michelle Booth to call him in addition to calling the construction supervisor so that he is aware of the violations. Megan Zammuto encouraged residents to call the police when there is a violation so that it is appropriately documented and there is a record of the violations.

Resident Paul Grimes of Field Street pointed out that there are piles of dirt on the site that blows across the surrounding areas. He also asked why there wasn't a town clerk of the works paid for by the developer but working on the project site to track any issues. In addition, he stated that the developer should notify abutters if there are conditions that will require the developer to pour concrete outside of the normal operating hours. Rick Asmann stated that he will discuss the dust issue with all of the developers of the site and will also speak with the Board of Health to closely monitor it. Bill Nemser stated that dust control was part of the Planning Board decision. Bill Depietri stated that CGP keeps two water trucks on site to spray water on the dirt piles. Chris Arsenault pointed out that there are state and federal regulations as well.

Resident Trish Saunders of Dettling Road stated several violations that she has documented of work being done outside of the agreed-upon hours and days. She pointed out that it was not a single incident but what appears to be a "pattern" of violations. She asked that the Board and the Town keep in mind that once site construction is complete, the site will be operational and the tenants will need to comply with the terms of lighting, operation, and delivery hours. Andrew D'Amour asked if the violations that Trish cited were documented by the police or a Town staff member. She indicated that several of them were.

Bill Cranshaw asked Bill Nemser if the applicant is in compliance with all other conditions of the special permit. Bill Nemser stated that he is not aware of any other violations. With regard to the MOA, the applicant is in compliance with all of the financial aspects of it. There are some aspects of the construction piece of the MOA that need to be completed, and Wayne Amico is in communications with the developer on those issues.

Resident Linda Thayer asked if all three property owners for the project are aware of and have copies of the MOA and all conditions related to the project. Rick Asmann stated that they are aware and do have

the information. Bob Dipietri stated that he does not represent the senior living facility or the apartment property. He only represents CGP, which is responsible for the retail portion of the project.

Natalie Robert of 48 Summer Street reiterated that residents should contact the police every time they witness or hear a violation occurring to ensure that the information is documented. Chris Arsenault pointed out that CGP was invited to attend the meeting in the hope that there will not continue to be violations occurring. Rick Asmann stated that the police contact him directly when they record a violation. He stated that he was not aware of the work that was being done on Sundays because the police were not contacted.

There was a discussion amongst the Board members and Bill Nemser as to whether each of the three property owners are bound by the MOA as successors since the original contract was between the Town of Maynard and Maynard Crossing/JV, LLC. Bill Nemser stated that he will confirm with legal counsel. The special permit runs with the land.

Jim Coleman asked who the point of contact should be for residents who witness a violation. Megan Zammuto stated that they should contact the police, who will document the violation and pass the information along to the Office of Municipal Services (OMS), which includes Rick Asmann. Residents may also follow up with OMS if they choose to do so. A fine cannot be imposed without written documentation of the violation by police or someone with jurisdiction witnessing the violation.

Natalie Robert asked if there will be a plan to have a similar discussion with the other two property owners (for the assisted living facility and the apartment building) about violations occurring on their parcels of the project. Wayne Amico agreed that it would be a good idea and pointed out that there has been a lack of communication from the construction supervisors for the assisted living facility and the apartment building, whereas communication with CGP has been more consistent.

Linda Thayer agreed that inviting the other property owners to a future Planning Board meeting is important to keep the lines of communication open with everyone involved in the project.

Public Hearing 86A Powdermill Road

Greg Tuzzolo stated that the hearing would need to be continued. Jim Coleman expressed his objection to the continuation, stating that this would be the third time continuing. He suggested that the Board allow the petitioner to withdraw his application without prejudice and resubmit when ready.

Bill Nemser explained that the site is complicated due to utility easement issues.

Greg Tuzzolo made a motion to open the Public Hearing for 86A Powdermill Road, which was seconded by Bill Cranshaw.

The Board voted unanimously in favor of the motion.

Wayne Amico provided a status update from an engineering review perspective. He stated that VHB provided the applicant with an initial comment letter with comments on both civil and site-related engineering and storm water issues. The applicant's engineer responded to that comment letter. VHB

then provided a second comment letter as the applicant had addressed about 75% of the issues from the initial letter but not the remaining 25%. VHB also received a traffic impact access study as requested and provided comments to the applicant on that study. The most recent letters from VHB were dated January 13, 2020 and January 14, 2020. There has been no response from the applicant's engineer since then. There have been multiple requests made to the applicant by Wayne Amico and DPW to come in and discuss water and sewer needs/anticipated impact. However, the applicant has not followed up on those requests. Bill Nemser pointed out that the utility issue he mentioned is separate from the capacity discussion that has yet to be scheduled.

Jim Coleman made a motion to deny the application without prejudice, which was seconded by Andrew D'Amour.

Greg Tuzzolo stated that he received an email from the applicant earlier in the day asking if they needed to be present to request a continuance of the hearing and he indicated that they do not need to come in for that request. As such, he stated that he would not vote to deny the application at this time. Jim Coleman and Chris Arsenault expressed their support and understanding of Greg Tuzzolo's response to the applicant.

The Board voted 3-2 against the motion. (Greg Tuzzolo, Andrew D'Amour, and Bill Cranshaw voted against the motion; Jim Coleman and Chris Arsenault voted in favor of the motion).

Greg Tuzzolo made a motion to continue the Public Hearing for 86A Powdermill Road to May 12, 2020, which was seconded by Andrew D'Amour.

The Board voted 4-1 in favor of the motion. (Jim Coleman voted against the motion.)

Discussion/scheduling of Zoning By-law and Planning Board Rules and Regulations Updates

Bill Nemser asked if the Planning Board is generally in support of the proposed changes to the Planning Board Rules and Regulations so that he can advertise for a hearing. The Board agreed that Bill Nemser can advertise a hearing for the proposed changes.

With regard to the Zoning By-Law updates, the process is for the Planning Board to submit proposed changes to the BOS, which reviews the proposed changes before sending back to the Planning Board for advertising a hearing. The Board was in support of sending the proposed changes to the BOS but asked for one typographical error to be corrected.

Bill Nemser stated that there will be an upcoming ANR for the Coolidge School property, which will be split into two parcels of land. Parcel B will remain the property of the Town and will need to be rezoned as open space.

Bill Cranshaw asked for clarification of the 9.4.5 section and how it would apply to a project like the one at 115 Main Street, where most of the space under the footprint of the building is designated as parking space.

There was a discussion about the intent of mixed use space and how much of the ground floor should be commercial space, etc.

Bill Nemser introduced Sue Grolnic, a resident who has expressed interest in becoming a member of the Planning Board. Mike Uttley will be leaving the Board as he will be moving out of town. Sue Grolnic was on the Planning Board for Newburyport, MA for 12 years prior to moving to Maynard. Greg Tuzzolo explained how the Alternate Member position works.

Natalie Robert also expressed interest in the Alternate Member position.

Bill Nemser noted that there is not officially a position open as Mike Uttley is still the Alternate Member.

Town Planner Update

Bill Nemser stated that the Master Plan is wrapping up. An Implementation Committee is being formed.

On Thursday night (February 13, 2020), there will be a meeting for the Florida Road Bridge 25% Design Review, which is open to the public from 6-9 p.m. to discuss the plans for bridge repair. Bill Nemser stated that ArtSpace and the Cultural Council have been in discussions about ideas for artwork on the bridge.

Greg Tuzzolo made a motion to adjourn, which was seconded by Andrew D'Amour.

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

Adjourned at 9:14 p.m.