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LEICESTER, MASS.

Leicester Planning Board Meeting Minutes August 15, 2023

Location: Leicester Town Hall, Meeting Room 3

Member Present: Joshua Campbell, James Reinke, Sharon Nist, Anthony Escobar, Lee Dykas

Members Absent: None

Staff Present: Donna Main, DIS Assistant

Others Present: Jim Bernardino, Damien Berthiaume, Esq., Mark Borenstein, Esq.

Call to Order: Chairman Campbell called the meeting to order at 7:00 PM

1. **ANR Plan** – 1 Breezy Green Road, request for lot division following receipt of special permit from ZBA for limited frontage.
Applicant: Sean O'Neil

Mr. Reinke said the ANR plan met the criteria and that it was a limited frontage lot and a special permit was approved by the ZBA on May 15, 2023.

Motion: Mr. Reinke moved to approve the ANR Plan

Second: Ms. Nist

Discussion: None

Record of Vote:

Joshua Campbell	Aye
James Reinke	Aye
Sharon Nist	Aye
Anthony Escobar	Aye
Lee Dykas	Aye
Five (5) in Favor. None (0) Opposed Approved 5 to 0	

2. **Public Hearing Continued – SP2021-03 11 Hankey Street - WorcShop**
Applicant has requested a continuance.

Motion: Mr. Reinke moved to continue the public hearing to September 5, 2023 at 7:00 pm

Second: Ms. Nist

Discussion: None

Record of Vote:

Joshua Campbell	Aye
James Reinke	Aye
Sharon Nist	Aye
Anthony Escobar	Aye

Lee Dykas	Aye
Five (5) in Favor. None (0) Opposed	
Approved 5 to 0	

Town Planner Report/General Discussion

- Mr. Reinke said Zoning Bylaws, General Bylaws, City and Town Ways, ANR Guidelines, The Zoning Act, and Subdivision Control Bylaws should be made available to new members.
- Mr. Reinke and Mr. Campbell have spoken to Town Administrator, David Genereux, about the new Town Planner position. The review group had issues with the applicants so they wanted to wait six months to see what would happen and that the DIS applicant they thought was going to accept the position said they didn't want to do it. He said there is another applicant that has been running the town planning office in the Town of Ware with a year of experience. Mr. Reinke doesn't think that's optimal but he's not sure the Town Planner career is popular as there are 18 town planner positions open right now. Mr. Reinke said the application for Town Planner got good reviews from Ware.
- General discussion about Planning, Zoning and Conservation agenda items and getting them on the next few agendas to keep things moving while they wait for the new town planner.

3. Public Hearing, Special Permit, Site Plan Review & Stormwater Permit

778 Main Street (SP2022-07), 25 unit multi-family residential development

Applicant: Charlton Road Realty, LLC

Mr. Bernardino was present to represent the project. He said the Conservation Commission approved the project with some minor conditions and they are waiting for the final Order of Conditions. They have received approval from the ZBA for the Water Resource Overlay District. They received comments from Quinn Engineering and did some slight modifications to the site plan and grading plan proposing a retaining wall closer to the roadway that created a greater undisturbed area for the abutters. Mr. Bernardino said he received a response from Quinn Engineering addressing the revised submission and Quinn had no further comments. The project is subject to MassDOT design and Quinn suggested low level shrubbery to maintain site lines onto Route 9 and that was fine. Ms. Main said town staff had no comments on the revised plans.

Damien Berthiaume, attorney, was present to address conditions the Board requested. Mr. Berthiaume offered proposed conditions.

- Concern about modifications of plans to allow additional bedrooms. Proposed condition: In the event that there are requests for future modifications to building floor plans to allow for additional bedrooms, such modifications shall not be permitted unless a site plan modification providing additional visitor parking spaces in compliance with the site plan regulations is provided to, and approved by, the Planning Board.
- Concern about trash bins. Proposed condition: All trash bins shall be stored in residents garages or in reasonable proximity to the houses or screened from view.
- Discussion on condos in the future. The permit runs with the land and would be attached to any condo association. Proposed condition: In the event that at any future time the proposed

development, or any portion thereof, is subjected to M.G.L. Chapter 183A Condominium Act, the applicable Homeowners Association created shall be specifically required to assume all operations and maintenance obligations set forth in the permit, as it may be amended from time to time.

Mr. Reinke likes all the proposed conditions as it helps the planning board enforce their conditions. Mr. Reinke would like all trash bins stored in the house/garage until it's due to be picked up by the hauler. Ms. Nist agreed as it also keeps the wildlife out. Mr. Reinke thinks the condition for additional bedrooms and increasing parking is good so there aren't too many cars for the area.

Mr. Berthiaume said that he believes all of the criteria for the special permit have been met. Mr. Reinke asked about detectable warning mats, but Mr. Bernardino said that has not been added to the plans but could be added as a condition. Mr. Reinke and Ms. Nist discussed time frames for trash bins to remain outside. Mr. Berthiaume said they can add a condition that trash bins cannot stay out for more than 24 hours dependent on trash pickup schedule. Mr. Reinke asked about low growing shrubs along the main street property line, and he'd like to condition that to maybe no more than 36" tall. Mr. Bernardino talked to the landscape architect to remove the taller things and leave the shorter native plantings.

Mr. Reinke proposed the following conditions in addition to the three offered by Mr. Berthiaume:

- Installation of native species plantings do not exceed 36" in height located along the Main Street property line.
- Detectable warning mats shall be installed at the easterly and westerly approach to the driveway.

Motion: Mr. Reinke moved to approve the Special Permit, Site Plan Review & Stormwater Permit For 778 Main Street (SP2022-07) 13 unit multi-family residential development from Charlton Road Realty LLC as delineated in plans revision date 7/24/23 with following conditions:

1. In the event that there are requests for future modifications to building floor plans to allow for additional bedrooms, such modifications shall not be permitted unless a site plan modification providing additional visitor parking spaces in compliance with the site plan regulations is provided to, and approved by, the Planning Board.
2. All trash bins shall be stored in residents' garages. Any and all leases concerning the units shall require such storage to be specifically stated herein. Bins shall not be left outside for more than 24 hours consecutively and shall only be left out on trash collection days.
3. In the event that at any future time the proposed development, or any portion thereof, is subjected to M.G.L. Chapter 183A Condominium Act, the applicable Homeowners Association created shall be specifically required to assume all operations and maintenance obligations set forth in the permit, as it may be amended from time to time.
4. Installation of native species plantings do not exceed 36" in height located along the Main Street property line.
5. Detectable warning mats shall be installed at the easterly and westerly approach to the driveway.

Second: Ms. Nist

Discussion: None

Record of Vote:

Joshua Campbell	Aye
James Reinke	Aye
Sharon Nist	Aye
Anthony Escobar	Aye
Lee Dykas	Aye
Five (5) in Favor. None (0) Opposed	
Approved 5 to 0	

4. 190 Main Street, Cherry Valley

Mr. Reinke said there is an on-site inspection scheduled for August 22, 2023 at 4pm and he would like it posted and wants 190 Main Street on the September 5, 2023 agenda.

Mark Borenstein, Esq. with Bowditch and Dewey was present to represent the project. Mr. Borenstein said there is no application or petition in front of the Planning Board but instead he was notified by the Town Administrator to attend the Planning Board meeting. Mr. Borenstein said the meeting they had with town officials did not go well and he apologized on behalf of the clients. Mr. Borenstein said he submitted a letter to the Planning Board regarding permitting for modifications and upgrades to the property. It has a current permit for storage uses only and owner wants to get changes approved.

Mr. Reinke asked if Mr. Borenstein and his client would be open to inviting the Board inside to see the whole building and he said yes, and that it was his understanding that the Town Administrator has already scheduled a site visit and the owners would be happy to accommodate whatever the board wanted. Mr. Borenstein asked if there was anything specific. Mr. Reinke said that he, BOH, Building, Fire, and Town Administrator were all at the last site visit. The issue is that the applicant is not following the conditions of the permit for the last 5 years or so and that there are serious life safety issues there. Mr. Borenstein said Lee Morse is now the majority owner and wants to work with the Board to make sure the property complies with the conditions. Mr. Borenstein said Mr. Morse has engaged an engineering firm to evaluate a new water line to the property, and update the fire systems, and he hopes the upgrades will solve safety concerns. Mr. Reinke said there has been ongoing unpermitted work going on there. There are safety issues, conservation issues (possible contaminants near the river), an unpermitted diesel tank adjacent to wetlands, and numerous building code infractions including propane tanks to unpermitted heaters, and poor structural work. Mr. Reinke said the Town is culpable now that they have seen these things and they need to be corrected.

Mr. Borenstein said Mr. Morse wants to bring everything into compliance and this is an opportunity to fix the issues, make the site better, and benefit the owner, the tenants, and the Town. Mr. Borenstein has reach out to the Building Inspector with the proposed scope of work. Mr. Reinke asked if they had engaged with an architect or structural engineer. Mr. Borenstein said he

was not aware of those individuals being hired, but he does know they have someone looking at the water hookups as they come from Worcester. Mr. Borenstein said they would like a new water line from Route 9 to allow for better water pressure.

Mr. Reinke said he was going to do a walk through on August 22nd and he anticipates this will be continued but he is hoping that the next time they meet, the owner has an engineer and contract they can share with the Board showing they are moving towards a real resolution. Mr. Borenstein clarified about hiring an architect for code compliance and Mr. Reinke said yes, they need an engineer and architect. Mr. Escobar asked if they were at full capacity for tenants and Mr. Borenstein said no that the building is 27,000 s.f and only 12,000 s.f is leased. Mr. Escobar feels the propane tanks needs to be removed from the inside of the building immediately, before the walk through, as it's dangerous. Mr. Reinke pointed out that they never pulled a permit for it. Mr. Borenstein said he and the property manager will be there on the 22nd. Mr. Reinke asked Mr. Borenstein to identify whether or not that business is registered with the Town. Mr. Dykas said the Special Permit only allows storage so none of the other stuff is allowed. Mr. Escobar said the last correspondence from the Fire Dept. was from May 2023 and those items have not been addressed. Mr. Borenstein said he does not have copies of any of those letters. Mr. Borenstein said nothing should be operating there except storage and he will provide a list of tenants.

Mr. Escobar prefers not to shut them down, but asked what options they have. Mr. Reinke said they could order a cease and desist especially for safety issues. Mr. Dykas said he's seen dump trucks dumping dirt there and it could be dirty and runoff into the stream. Mr. Dykas asked about liability to the Town even though Mr. Borenstein and Mr. Morse are willing to make the changes, they are in violation and the special permit could be revoked. Mr. Dykas wants clarification from Town Counsel. Mr. Reinke proposed taking the following immediate steps:

- Removing propane tanks
- Removing fuel storage tank off property
- Removing any construction spoils, dirt, millings off the site and put in authorized location
- More than 2 dozen unregistered vehicles are there that need to be removed as there is no outside storage per the conditions. Mr. Reinke is ok with registered vehicles staying but that's all.
- RV appearing to be used as residence needs to be gone by August 22nd or face a \$220 per day fine until it's removed.

Mr. Borenstein would recommend to his client that he reminds all his tenants that this is for storage only and they need to stop doing anything else and told they will be bringing this property into compliance. Mr. Borenstein will try to do as much of that as they can do by the 22nd. Mr. Borenstein said there is a tree removal business that has two registered vehicles stored there and he understands the millings were used for the recent resurfacing of the parking lot. Mr. Escobar said the amount of millings there would be hard to move by the 22nd so tenants need to be alerted. Ms. Nist said there has been no application or approval for an earth fill or removal permit so they are in violation of that as well. Mr. Escobar asked for wattles to be installed around the millings. Mr. Dykas said the history of the property was Eller's Restaurant, and a store and the whole back was storage of lumber. Mr. Borenstein said they will work to bring this into compliance as fast as possible and he will talk to his client.

Mr. Reinke would amend his suggestion of the 22nd for all of the items listed based on Mr. Escobar's comments. Mr. Reinke said to have the following removed by the 22nd:

- The propane tanks removed from the building
- Fuel storage tank is portable and should be removed
- The RV should be removed.
- Wattles or accessible containment measures approved by Conservation to surround spoils piles including millings should be done.
- Suggested site visit on September 15th and hope to see spoils piles gone, unregistered vehicles gone or stored inside.
- Mr. Reinke said the keys to doors need to be in the Knox-box and properly labeled by the 22nd.

Mr. Reinke wants to continue this to September 5th and wants to see the contracts for engineers and architects to show that they are moving to compliance so they can remain open while the rest is done. If these things are not met by September 15th, they would start imposing fines. Mr. Borenstein said thirty days sounds reasonable and he will relay this to his client. Mr. Escobar said as long as the Board continuously sees progress, they would work with the Applicant/Owner. Mr. Reinke said the Board is looking for compliance instead of fines but the business must be legitimate.

Motion: Mr. Reinke made a motion to allow the continued use of the property in its current state with the following conditions to be met by August 22, 2023:

1. The propane tanks shall be disconnected and moved to a compliant area offsite
2. Keys to all exterior doors shall be properly labeled and stored in the Knox-box
3. The fifth wheel RV shall be removed off site
4. The large capacity fuel storage unit shall be moved off site

Second: Ms. Nist

Discussion: None

Record of Vote:

Joshua Campbell	Aye
James Reinke	Aye
Sharon Nist	Aye
Anthony Escobar	Aye
Lee Dykas	Aye
Five (5) in Favor. None (0) Opposed	
Approved 5 to 0	

Mr. Reinke asked if the previous motion should have a monetary component.

Motion: Mr. Reinke moved to amend the previous motion to add a condition number 5. that if these conditions are not met by the August 22nd inspection, fines will be imposed at \$300 per day.

Second: Ms. Nist

Discussion: None

Record of Vote:

Joshua Campbell	Aye
James Reinke	Aye
Sharon Nist	Aye
Anthony Escobar	Aye
Lee Dykas	Aye
Five (5) in Favor. None (0) Opposed	
Approved 5 to 0	

Motion: Mr. Reinke made a motion to allow the continued use of the property, as a storage facility, if the following conditions are met by September 15, 2023:

1. That all the conditions of the August 22nd have been met.
2. That all unregistered vehicles be moved offsite
3. That all construction site work spoils including millings and dirt be removed from the site or properly contained with erosion control measures and inspected by the Conservation Commission
4. If those conditions are not met by September 15, 2023 deadline, a \$300/day fine will be imposed.

Second: Ms. Nist

Discussion: None

Record of Vote:

Joshua Campbell	Aye
James Reinke	Aye
Sharon Nist	Aye
Anthony Escobar	Aye
Lee Dykas	Aye
Five (5) in Favor. None (0) Opposed	
Approved 5 to 0	

Mr. Reinke said to Mr. Borenstein that he wants to emphasize that they really want to work with his client and they could be very successful if they see progress towards compliance. Mr. Dykas said if you review the original hearing notes, the water/sewer was a real issue. Mr. Borenstein said that's why they are working with the engineer, Morse Engineering (MEC), to connect to water/sewer. Mr. Borenstein said he is looking forward to working with the Board towards compliance.

Motion: Ms. Nist moved to continue the discussion on 190 Main St. to September 5, 2023 at 7pm or thereafter.

Second: Mr. Reinke

Discussion: None

Record of Vote:

Joshua Campbell	Aye
James Reinke	Aye
Sharon Nist	Aye
Anthony Escobar	Aye
Lee Dykas	Aye
Five (5) in Favor. None (0) Opposed Approved 5 to 0	

General Discussion

Ms. Nist:

- What's happening across from Walmart. Ms. Main said she hasn't heard anything new but thinks its supposed to be Burger King and possibly a Starbucks. Mr. Reinke heard they were building the storage component.
- Chapel Street Mill – people living there. Ms. Main said she let the building inspector know.

Mr. Reinke:

- Main St. property (700s) - lack of shrubbery at property next to Skyview and the church on Main St. Ms. Nist recalled they were supposed to put up some type of fencing.
- Main St. duplexes across the street were supposed to have Cultec chambers put in and needs follow up.
- G&L auto had to change their site plan around to change ADA spot so we need an as-built plan.
- MBTA deadline to come up with something to allow affordable housing along the MBTA route.

Mr. Dykas:

- Asked if building inspector wrote a letter to Brickyard Road re: AirBnB or wedding venue which is not allowed in zoning. Ms. Main said she hasn't seen a letter.

Motion: Ms. Nist moved to adjourn.

Second: Mr. Reinke

Discussion: None

Record of Vote:

Joshua Campbell	Aye
James Reinke	Aye
Sharon Nist	Aye
Anthony Escobar	Aye
Lee Dykas	Aye
Five (5) in Favor. None (0) Opposed Approved 5 to 0	

Meeting adjourned at 8:58 p.m.

Respectfully Submitted by:
Lisa Westwell, Administrative Assistant
to the Planning Department

Date Approved: 2/6/24

Planning Board Signatures


Joshua Campbell, Chair


James Reinke, Vice Chair


Sharon Nist, ~~Clerk~~


Anthony Escobar

Lee Dykas