

Leicester Planning Board Meeting Minutes
August 13, 2013

MEMBERS PRESENT: Jason Grimshaw, David Wright, Debra Friedman, Sharon Nist and Adam Menard

ASSOCIATE MEMBERS:

MEMBERS ABSENT: Kathleen Wilson

IN ATTENDANCE: Michelle Buck, Town Planner; Barbara Knox, Board Secretary

MEETING DATE: August 13, 2013

MEETING TIME: 7:00 pm

AGENDA:

- 7:00PM Appointments:
Associate Member
- 7:05PM General Board Discussion, Rezoning Requests:
A. 100 Clark Street (HB-2 to SA)
B. 1439 Main Street (HB-1 to R1)
- 7:30PM Public Hearing Cont:
Site Plan & Special Permit Application
- 8:00PM Application:
Request for Release of Escrow Account Funds, Carey Hill Estates
- 8:15PM Approval of Minutes:
7/9/2013
- 8:30PM Town Planner Report
- FY 2014 Projects
 - Vacation Request
 - Miscellaneous Project Updates

Mr. Grimshaw called the meeting to order at 700PM

Appointments:

Associate Member

MOTION: Mr. Wright moved to appoint Kathleen Wilson as Associate Planning Board Member

SECONDED: Ms. Nist – Discussion: None

VOTE: All in Favor

General Board Discussion Rezoning Request

A. 100 Clark Street (HB 2 to SA)

Mr. Kevin Hesselton said he was here on behalf of his father, who has taken ill. He has been helping with some of the financial concerns and he discovered that the property his father and mother built back in the 90s is in two zones, one that is now known as Highway Business-Industrial 2 (HB-2). He was here to make a request to have the property rezoned to all Suburban Agriculture (SA), which would make it consistent to the abutting properties. His reasoning was so he didn't run into issues years down the road if he should choose to do something with the property.

Ms. Nist asked if there was residential property on both sides.

Mr. Grimshaw said the property is 100 Clark Street and it looks like it sits across from Wasilla Drive.

Mr. Hesselton said there's a residential zone on the west side of the home, as well as across the street, even though across the street was a different zone all together.

Mr. Grimshaw said the abutting property zoned HB-2, runs along Route 56 and that property was zoned for that purpose. But then there is that area which is residential.

Ms. Friedman said when saying that you don't want to run into problems down the road, what kind of problem is anticipated? Mr. Hesselton said he didn't know. It is zoned business right now and at some point he will be taking over the property and it may be sold some day, etc. and he is trying to avoid anything not being as it should be.

Ms. Buck said as explained in her memo to the Board, most of the lot is in the HB-2 Zoning District. It's been commercially zoned since the 60s and prohibited housing around 5 years before that house was built, so she was not sure how that happened. There has been some indication that Mr. Hesselton's father was aware of the zoning issue at the time the house was constructed or shortly thereafter.

Mr. Hesselton said after the house was constructed, the Town realized they allowed a builder to build a house on a piece of property that was business zoned. At that point, his parents were living at the home.

Ms. Buck explained that basically, because the Town has not taken enforcement action within the first 10 years of existence, the Town can't take any enforcement action against the house now. However, the house does not have a legal nonconforming protection status. If it had been built legally and later the zoning was changed, it would be considered a legal nonconforming. That way, if someone wanted to add onto it, he or she could do so through the ZBA. This does not have that protection, so basically the house can stay as is, but expansion or changes to it would be complicated as it's currently zoned. She did not know how a bank would view this. She has mixed feelings about this related to spot zoning, though it currently split between two districts. What sits in back of her mind is that in 5 years, will they want it back to a commercial zone? Mr. Hesselton said he could do that now.

Ms. Buck said there has been a lot of commercial development happening near there and the zone extends back over 1,500sf, which could open up to a large amount of commercial development in the rear. She was curious if the owner looked at all options. Mr. Hesselton felt the Town would much rather have it zoned for a house there versus someone someday deciding to put some business between a residential site, because essentially, that is what it is.

Mr. Grimshaw asked how far down the property sat from Route 56. Mr. Hesselton said probably a ¼ mile and there was another home in between.

Mr. Grimshaw said one of the first things that come to mind is the issue of spot zoning and because there are abutting residential zones, maybe it wouldn't be something the Attorney General's Office would be concerned over. Ms. Buck said that question is always asked by the Board and it has a lot to do with the Town's interpretation and the way it's written in the Town Meeting Report, if the Town Meeting Report makes it clear that the Planning Board does not consider this spot zoning and felt it was an appropriate change.

Ms. Buck stated that this was put on the agenda because Selectmen Dennison submitted a request asking about the process and wanting to get some general comments from the Board, as to whether they were willing to support and take this on, or to have them [the owners] submit this as a private

request. A property owner can always submit a private request and the other option is having the Planning Board sponsor a zoning change.

Ms. Friedman asked if what is being shown on the map was all one parcel. Ms. Buck said the map shows the lot, HB-2 in yellow and SA in green and the piece shown, is all one lot, but there is another lot to the left that's in SA.

Ms. Friedman said that was her question, was there another lot in between? How many lots are there? She would have liked to have seen a plot plan of Clark Street. Ms. Buck said there is a large lot to the east that is entirely in HB-2 and the lot to the left is entirely in SA, only this lot is split.

Ms. Friedman said she would have liked to have seen a plot plan of the entire area because she didn't know how many other lots were there that this was divided into. Mr. Hesselton presented a copy of a map showing parcels in area [Map from 2004 Town Meeting creating HB-2 district]. Upon review, Ms. Friedman noted that there were three other lots on Clark Street, between this property and Route 56 and the only one being discussed was 100 Clark Street and moving it into SA.

Mr. Hesselton agreed. He noted there was another residential home there, but in the HB-2 zone.

Ms. Buck said that area has been zoned commercial since the 60s and it's possible that other home was put in before the district prohibited housing in 1993.

Mr. Hesselton said he was confused as to why the Town allowed them to build in the first place. Ms. Buck explained that area was zoned commercial in 1968 and didn't prohibit house until 1993, so that other house could have been built within that window between 68 and 93. Ms. Friedman agreed and noted that in between that time, it allowed housing in a commercial zone.

Mr. Hesselton said that doesn't explain his parents' home. Ms. Friedman said the Building Inspector obviously thought it was in a different zone. What the Town could have done in 1998 was, to order the house to be taken down, but they didn't.

Mr. Hesselton said ultimately, his request was just trying to get it to where it should have been. Either by not being built in the first place or after the Town realized when it was built, let's get it zoned properly.

Mr. Matthew Dennison said the Building Inspector, at that time, realized he made a mistake and noted needing to rezone it so that the property fit in.

Mr. Hesselton said his parents never pursued that and it's now been 15 years. He just wants to get it corrected.

Mr. Wright asked how the Attorney General might look at this. Could this be a possible spot zoning issue? Ms. Buck felt that if the Planning Board, in their report, stated the justification to support, it should be okay.

Ms. Friedman said her would like to request to have the property owner put something in writing, saying he fully understood that by changing the zoning, it changes the use of the property. So that if, within 3 years, someone approaches him saying, they want to buy this piece of property, he will not come back here asking to have it zoned back to commercial.

Mr. Hesselton said he understood and that it was not his intent.

Ms. Friedman explained the way that area was now set up, someone could buy up all those parcels, because they can put some type of business right in an HB-2 zone. Mr. Hesselton said he understood

and felt another reason was that he would assume the Town would not necessarily want that. Ms. Buck noted that Town actually made that section of Route 56 a priority development area.

Ms. Friedman agreed and noted the Economic Development Committee was currently looking at all those kinds of parcels and trying to put them all together, so the Town can potentially develop those areas. He also needed to understand that potentially, all of those parcels around his lot could be developed for a business that can go right up to the border of his lot. Mr. Hesselton said he understood and noted a business could do that now.

Ms. Friedman said she just wanted to make sure he understood that if a business approaches, asking to buy the house, he couldn't sell it to them to develop something on that lot. Mr. Hesselton said he understood that they couldn't develop on it.

Ms. Friedman said they could purchase it, but they wouldn't have any reason to purchase it because it couldn't be included in the square footage of the lot for HB-2. Mr. Hesselton said he understood.

Mr. Grimshaw asked how the Board wanted to proceed.

Ms. Friedman asked if the Board was going to sponsor this or ask the property owner to sponsor. Mr. Grimshaw said he didn't have a problem sponsoring this request and felt it was justifiable. Ms. Friedman agreed. Ms. Buck said a motion would be needed recommending sponsoring the article.

MOTION: Mr. Wright moved to recommend the Planning Board sponsor the rezoning of 100 Clark Street from Highway Business-Industrial 2 (HB-1-2) to Suburban Agriculture (SA).

SECONDED: Ms. Friedman – Discussion: Mr. Wright added: Dependent upon receiving a letter from the property owner stating they were aware and understood the situation regarding changing the zone and use of the property.

VOTE: All in Favor

B. 1439 Main Street HB 1 to R1

Mr. Paul Schold said he was here tonight with Jeff Gores [affiliation inaudible on tape] and Chris Trevisani from Clover Land Acquisition & Development. He used to own the land the Tractor Supply Store currently sits and there is approximately a remaining 10 acres in the back that is zoned HB-1. He was contacted by Mr. Trevisani for the possibility of a senior development and that requires different zoning. He was here to ask if there was a possibility for that to happen. Right now, he felt that this was the best thing for everyone, including himself. At that point, Mr. Schold turned discussion over to Mr. Trevisani to help further explain the proposal.

Mr. Chris Trevisani said Clover is a senior housing developer based in suburban Buffalo, New York. They've been building senior communities for the last 10-12 years and have done 17 communities from Buffalo to Syracuse to Albany and now doing some out west in Kansas City and Texas. They are exploring bringing their prototypes further east. They build an independent living community that is one building usually two to three stories and consists of one and two bedroom units that are rental units and not for sale. These are not condominiums or an assisted living facility or nursing home, so they don't provide care or meals. It's an independent living community for seniors. When saying seniors, they are comfortable saying 62 and over restriction, with the average age being around 72-75 years old. They cater to the moderate-income senior family; primarily it's a single person whose spouse has passed away. They don't take public funds and are not subsidized and the units will be market rate. They provide their own construction and management company. As for the size and density of the site, they are flexible within the site for around 100 to 110 units.

Mr. Grimshaw opened discussion to the Board, noting the understanding that this was not a Site Plan Review before the Board and any questions to that respect would not be relevant right now.

Ms. Buck interrupted noting the Board needed to take action regarding tonight's scheduled public hearing, for which the applicant has requested a continuance.

Discussion recessed to open the continued public hearing..

Public Hearing Cont:

Site Plan & Special Permit Application, 1603 & 1605 Main Street (gas station, fast food, convenience store, car wash, bank, general retail)

Ms. Buck said she received a request from applicant from 1603-1605 Main Street asking to continue the public hearing to the Board's next meeting. The applicant needs more time to prepare revised plans. So they asked to continue to Tuesday, September 3rd, at 7:30PM.

Mr. Grimshaw opened the hearing and then asked for a motion to continue.

MOTION: Ms. Friedman moved to continue this public hearing to Tuesday, September 3rd at 7:30PM.

SECONDED: Mr. Wright – Discussion: None

VOTE: All in Favor

Discussion resumed, 1439 Main Street

Ms. Friedman asked about the availability of Town water and sewer for the site. Has that been looked into yet? Mr. Schold said there was a connection located at the end of the driveway.

Ms. Friedman asked if they were allowed to hook in. Mr. Schold said he hadn't approach the water/sewer district. Mr. Trevisani said they hadn't asked for permission yet, until they have determined if this avenue works out.

Ms. Friedman asked if the property was located in the Water Overlay Zone. Ms. Buck said no, it's just outside the zone. Ms. Friedman said if this lot was located in the Overlay Zone and with this type of construction on that size lot, would make it more difficult. She noted that it's hard to determine what issues may arise without a site plan, but without water and sewer and abutting the water overlay, there's no sense trying to go forward with the development plan. Mr. Trevisani agreed.

Mr. Schold said they were here to see if there was a rezoning possibility. Mr. Grimshaw said he agreed that it would be hard to make a determination regarding a project without a site plan, but what is currently before them is a rezoning request.

Ms. Nist felt there wouldn't be enough acreage and even if this does get rezoned, they would have to go before the ZBA for area and if they say no, then what? Ms. Buck agreed and noted they probably wouldn't meet the density either. It was mentioned 110 units and for multi-family residential dwelling units, the maximum is 6 units per acre for a Senior Development proposal.

Mr. Schold asked how long ago multi-family was removed from HB-1, wasn't it once allowed in HB-1. Ms. Friedman said no, never and that was part of the agreement when the water line went up Main Street, that Main Street would be rezoned not to allow any new housing. It didn't matter whether it was Senior Housing or single family. Once that waterline went in, that was part of the agreement. When that waterline went in, was when Route 9 west was rezoned and it was rezoned to

a greater depth, so that even behind where there is Suburban Agriculture, people couldn't build and come out onto Route 9.

Ms. Friedman asked if there were any abutting parcels that could be added onto that property and included in the proposal. Mr. Trevisani said that could be looked into.

Ms. Friedman said it only has to be square footage to get the area requirement, but they wouldn't get the density they were looking for. They could possibly get 80 units maybe, but there was no way ZBA would approve 110.

Ms. Buck said the density is based on type of structure and duplexes, town houses and other multi-families, they are lumped together. The number can go higher than that with Assisted Living or a Congregate Facility. When she reviewed the bylaw again, she noticed that the bylaw does state an Independent Living Facility occupying a single structure is allowed up to 16 units per acre.

Ms. Friedman asked what would happen if this didn't go. Mr. Trevisani said he will have some investors who will not be happy with him. Ms. Friedman said she asked because people, who are under 62, aren't allowed to live in Senior Housing. Mr. Trevisani said he's built several of these and goes out to look at the demographics of the area and competing projects in the area. This area is identical to where they have built other developments like this and they are all 92 to 96% occupied before they finish the structure.

Ms. Buck noted that this request would look more like spot zoning because this would be directly a financial gain of one property owner. Five years ago, when this property was rezoned to HB-1, at that time, the Town felt it was consistent with the Town's Economic Development goals. Reversing that could create an island of residential between two commercial districts. It's not part of the Town's community plan for general welfare. Also, Senior Village Developments are allowed in almost every other zone in Town.

Mr. Grimshaw asked for any further comments, questions or concerns; hearing none, asked how the Board wanted to proceed. He felt it would be very difficult for the Board to sponsor this change because this is a lot closer to being spot zoning and he cannot make a recommendation.

Ms. Friedman asked if the applicant would be comfortable putting their proposal in writing and asking the Board of Selectmen for it to go on the warrant, rather than having the Planning Board sponsor it.

Ms. Buck noted that the process would be slightly different. They would submit their request to the Board of Selectmen and the Selectmen would have 14 days to refer to the Planning Board and the Planning Board has 65 days in which to hold a hearing and make a recommendation.

Ms. Friedman asked if the Board would be better of looking at the rest of that piece that goes down Route 9 and rezoning it all. Mr. Wright asked which piece, to the right or left of this lot. Ms. Friedman said to the east. There's this stripe where the auto body business sits right now and would it be better off to include that piece. She felt that once that 10 acre parcel was taken out, it would make the parcel to the east basically undevelopable because of the buffers.

Ms. Buck agreed. She said there may be another option, because when this first came before the Board, there was a lot of back and forth about which commercial business could be presented, and HB-1 does nothing for that auto body business.

Ms. Friedman suggested extending the Central Business (CB) District to include the auto body and the 10 acre parcel. That would allow Mr. Trivisani to do what he wants but also give the auto body

business a better chance to do something with that lot. Ms. Buck noted the Central Business District allows Senior Village Development.

Ms. Friedman asked if the applicant if he would be willing to rezone to CB instead, because then the Board could look at that whole parcel. That way it would eliminate the spot zoning concern and it would make the auto body property more valuable, because it could now be developed.

Ms. Buck said her only concern was that zoning does not fit the character of that section of Route 9. That zoning was written specifically for the downtown area.

Mr. Trivisani asked if there would be any support from the Board to modify the HB-1 district to permit a senior development. Ms. Friedman said no, because senior development is virtually allowed in the rest of the Town and the HB-1 & HB-2 zones were designed for business.

Ms. Buck noted that the CB district is one of the few districts that allows multi-family, but without this parcel, there are no other parcels large enough for significant multi-family developments.

Mr. Grimshaw said he wasn't completely sold on this and is not prepared to make a recommendation tonight.

Mr. Wright suggested for the applicant to talk with the abutting property owner, because he would have to agree with the change. Ms. Friedman said they didn't have to do that.

Mr. Grimshaw said he didn't really want to have the Planning Board sponsor this.

Ms. Buck agreed they don't have to speak with the abutters, but felt the Planning Board wasn't going to support it without abutter support, especially because it was just rezoned as well.

Mr. Wright said that is where he was going with this. To get the support of the Board, they would want the other property owners on board as a whole.

Mr. Grimshaw said he liked the idea of looking into the proposal but it is reversing a commercial zone back to residential.

Mr. Schold said the auto body business would have to be onboard. Ms. Friedman said the auto body business would be better off going along with the change in the zoning. Mr. Schold asked if discussion could be continued to the next Board meeting in order for them to contact the abutting property owners. That way they can come back with something more firm. All agreed.

Application

Request for release of Escrow Account Funds, Carey Hill Estates

There are still some outstanding procedural issues related to the road acceptance, so this request will be tabled to the September 3rd meeting.

Approval of Minutes

7/9/2013

MOTION: Ms. Friedman moved to approve the minutes of July 9, 2013 with corrections noted by Ms. Nist to fix the All in Favor vote on the minutes to 4 in favor / 1 abstention (Mr. Menard)

SECONDED: Ms. Nist – Discussion: None

VOTE: All in Favor

Planner Report

- *Pondview Estates*

A letter was received from Mr. Iqbal Ali who is the developer of Pondview Estates. This is a 500 foot cul-de-sac off of Tobin Road and as approved, it has 3 streetlights: one at the entrance, one-half way down and one at the end. The Board approved a National Grid plan in 2010 and the developer just sat on it and did nothing until this year. The problem is, the Town no longer wants to pay for streetlights. The Board of Selectmen, 5 years ago, agreed to pay for those streetlights on a subdivisions that were “in the pipeline” [projects that were approved but not yet completed]. The problem is that another 5 years have gone by and the Board of Selectmen and Town Administrator never anticipated that a developer would sit on it for another 5 years and they no long want to pay for those streetlights.

Ms. Buck informed the Board that Mr. Ali doesn't want to put in the streetlights. The Town Administrator's position is that the Town is not going to pay for the lights, but the Planning Board should still require the lights and require some kind of private arrangement for payment. The Planning Board had been under the understanding that any new development that came in would either have a homeowners association, solar streetlights, or have streetlight individually wired into particular homes that would pay for their light through their electric bill. It would be difficult to retroactively to do that on a project approved in 2005.

Ms. Friedman said also the fact that the State has extended all approvals for subdivisions. Ms. Buck agreed that it gave this project another 2 years. Ms. Friedman said because the State extended all these approvals on these subdivisions because of the economic climate, the Board can't go in and make that change.

Ms. Buck felt it was not unreasonable for the Board of Selectmen to say the agreement was made 5 years ago and it's totally a different economic climate.

Ms. Friedman noted to let them say it. Ms. Buck asked if she should request a more formal comment. Ms. Friedman said yes. Mr. Grimshaw agreed and felt it was a reasonable request.

Ms. Buck asked if the Board had a preference on how to handle the Pondview request t. She would like to err on the side of caution and have a public hearing. All agreed.

Ms. Friedman suggested for the developer to look into putting in solar lighting and to tell Mr. Ali that was the Board preference and if he didn't want to do that, then schedule a hearing.

Ms. Buck agreed.

- *Zoning Legislation*

Included in the mailing was a summary of House Bill 1859, which is a summary prepared by the Massachusetts Smart Growth Alliance group that is in support of this bill. It's an Act Promoting the Planning and Development of Sustainable Communities. This is moving forward faster than some of the other zoning reform bills and has been referred to Committee at this point. Ms. Buck said this information was included to keep the Board informed. There was discussion related to some of the proposed changes to the Zoning Act and the Subdivision Control Law.

- *Parker Street*

There is a hearing on Parker Street tomorrow and Town Counsel filed a written statement with the Court. The jurisdiction will remain in Land Court (rather than foreclosure court) and could be tied up for a while. Ms. Buck noted she hoped that in the future when she suggests getting Town Counsel's opinion, the Board will agree and continue until an opinion has been received, even if the vote ultimately ends up being the same.

- *Boutilier Estates*

Ms. Buck was told that the developer is weighing a couple of options and they don't seem to want to publically disclose what they are considering. She noted that they may be coming to the Board with a conceptual plan in the next couple of months to dead-end the project, with some restrictions that on the number of housing lots.

Mr. Grimshaw asked for any further comments or concerns; hearing none, asked for a motion to adjourn.

MOTION: Mr. Wright moved to adjourn

SECOND: Ms. Nist - Discussion: None

VOTE: All in Favor

Meeting adjourned at 8:35PM

Respectfully submitted:

Barbara Knox

Barbara Knox

Documents included in the mailing packet

- Agenda
- Memo to the Board from Michelle Buck, Town Planner dated July 31, 2013
- Map showing 100 Clark Street zoning change request
- Map showing Main Street zoning change request
- Draft copy of Special Permit, Site Plan & Stormwater Permit Approval for 1603-1605 Main Street
- A summary of House Bill 1859 that was prepared by the Massachusetts Smart Growth Alliance.
- Minutes regarding the Main Street Rezoning Hearing, 3/18/2008 and 4/1/2008
- Planning Board Minutes of July 9, 2013

Documents submitted at meeting

- N/A

Approved at the 9/3/2013 Meeting