

## Planning Board Minutes, 01/09/2018

**Town of Lenox  
Planning Board  
Land Use Meeting Room  
January 9, 2018**

**Members present:** Chair Pam Kueber, (PK); Kate McNulty-Vaughan, (KMV); Tom Delasco, (TD) Kameron Spaulding, (KS); Deborah Rimmmler, (DR)

**Staff present:** Gwen Miller, Land Use Director, (GM); Peggy Ammendola, Land Use Clerk, (PA)

**Also present were the following:** Rob Akroyd of Greylock Design Associates, Attorney John Gobel of Gobel and Hollister; Dave Ward, Developer of 241 Walker St.; Jim Scalise of SK Design; Linda Miller of Birchwood Village; Mike Kulig of Berkshire Engineering; Selectman Ken Fowler and Joel Williams of The Berkshire Record. Mr. Williams audio recorded the meeting.

The meeting was called to order at 6:00 PM.

### **Documents provided for this meeting:**

- Agenda
- Minutes November 28, 2017
- Minutes December 11, 2017
- Form A + Plan for Mass Audubon
- January 2, 2018 letter from Christopher Ketchen, Chief Administration Officer for the Town of Lenox to LD Builders, LLC regarding water/sewer charges
- MGL Part 1, Title VII, Chapter 40, Section 57, regarding local licenses and permits
- December 8, 2017 SK Design response to comments from Town Planner, Foresight Land Services, DPW, Fire Dept., & Berkshire Engineering
- Peer Review Comments #2- Foresight Land Services letter of January 8, 2018
- Correspondence from Abutting Communities

### **Approve Minutes:**

*November 28, 2017-Changes were received via email just before the December 11<sup>th</sup> meeting, so they were tabled in order to have time to make edits. KS made a motion to approve the minutes and DR seconded the motion. The minutes were approved by a vote of 5-0.*

*December 11, 2017-KMV made a motion to approve the minutes as amended. DR seconded the motion. The minutes were approved by a vote of 4-0-1. KS abstained as he was not at that meeting.*

**Chestnut Lane:** Present was Rob Akroyd of Greylock Design Associates. In June 2016, the Planning Board endorsed a Form A with a covenant for the restoration of the road for property on Chestnut Lane held by the Macalin Realty Trust. They have since restored the road, and now require a Certificate of Performance from the Planning Board. All agreed that this was not actually an extension of Chestnut Lane. GM has spoken with Fire Chief Dan Clifford and agreed that the address assigned to this parcel should be 15 Martha Lane. The Board had a site visit on December 14, 2019 to inspect the road to ensure it has been constructed in accordance with the covenant. KMV made a motion that the Board sign the Certificate of Performance. DR seconded the motion and the Board voted to agree 5-0. KS made a motion that the Board assign the address of 15 Martha Lane. TD seconded the motion and the Board voted to agree by a vote of 5-0. The Certificate of Performance was signed by the Board and notarized by Attorney John Gobel. Mr. Akroyd said that he will scan and send a copy to the Planning Board.

**Form A-plan for Mass Audubon-**The Form A was presented by Peter Nikitas of Foresight Land Services. The property, owned by the Kanz Estate, is off of West Mountain Road and is situated in both Lenox (2.82 acres) and Richmond (.75 acres). The intent of the Form A is to convey the 2 pieces to the abutter, Mass Audubon. The Town of Richmond signed off on the Form A on January 8, 2018. After examining the plan, TD made a motion to endorse the Form A as presented. KS seconded the motion and the Board voted to agree 5-0.

**241 Walker:** Continued hearing for the Application of Stone Path Development, Inc. for the property at 241 Walker Street (Map 8, Parcel 1 and Map 8, Parcel 6-1) in the Residential "R-1A" zoning district. The Applicant seeks to develop nine (9) single family homes on 9.5 acres under Sections 3.4 and 9.7 of the Lenox Zoning Bylaw: "Special Permits" and "Open Space Flexible Development". The first hearing was on November 7, 2017 and a site visit followed on November 17<sup>th</sup>. The second hearing was scheduled for November 21<sup>st</sup>, but was canceled. On December 11, 2017 SK Design Group, Inc. delivered two copies of additional information for the Special Permit application with full size project plans.

PK began the meeting by referring to a copy of the January 2<sup>nd</sup> letter from Chris Ketchen, the Town's Chief Administration Officer regarding delinquent funds of \$101,775.39 owed to the Town for water/sewer charges by LD Builders, LLC. In his letter, Mr. Ketchen referred to Massachusetts General Law chapter 40, Section 57 which states that the Town may deny any application for permits for any person, corporation or business enterprise who has neglected or refused to pay municipal user charges.

Mr. Ward said that neither LD Builders nor Stone Path Development, Inc. owes anything to the Town of Lenox and he has turned this matter over to his attorney, Richard Dohoney. He said that LD Associates is an independent company that owns a shopping center that is located at 55 Pittsfield Rd. At one time there was a restaurant named Jae's at that location. Mr. Ward says that Jae's and the condominium association that is at the rear of the shopping center owe Mr. Ward over \$150,000.00. He is trying to collect this money from them and when he does, the Town will be paid. He explained that LD Associates bought all of the stock of Gateway, LLC, an entity owned by David Case who developed the shopping center. Mr. Case had one meter placed at Pittsfield Road, and that meter serves the shopping center and the 41 residential condominiums. Mr. Ward argued that this matter has nothing to do with the 241 Walker St. project. PK stated that Town Counsel believes that there is enough of a

connection between LD Associates and Stone Path for Mr. Ketchen's letter to be germane. Mr. Ward disagreed saying Attorney Dohoney is knowledgeable about local statute and maintains that the companies are separate and independent of each other.

DR said that the Board needs to go by the direction of Mr. Ketchen, and suggested that the Board could either go forward with the hearing, but not come to a determination until this matter is settled, or table the hearing. Mr. Ward expressed that it would be very serious for the Board to table, and argued that the Board could not deny the application. He stated that he had already invested a good deal of money into the project and that the Board was pressuring him. Mr. Ward told the Board that he would want the Board to put in writing anything that would delay his project so that he would put in damages against Navin Shah, the principal for Jae's. TD responded that Mr. Ward, knowing all along that this payment was delinquent, was responsible for feeling that he was in a bind, and that either Mr. Ward or his business owed the Town a significant amount of money. PK preferred to table the hearing, whereas the other members chose to proceed with the hearing. The Board agreed to proceed with the hearing, but withhold a determination. Mr. Ward stated he felt that was reasonable.

Mr. Scalise oriented the Board to the site plan and detailed the changes that have been made. He said that the road name has been changed to Golf View Drive. This had been a cul-de-sac, but with the consent of the Fire Chief it is now a hammerhead which provides a turnaround for fire trucks. A landscape plan and lighting plan was reviewed.

Mr. Scalise reviewed the stormwater system designed for the site. Test pits, or borings, were made across the site to determine where the groundwater was. The bottom of the pond has to be above the groundwater level, so the basins were lifted to meet that requirement. Originally they had planned on rooftop infiltration units but now have incorporated all of the stormwater by putting in one location instead of individual. All infiltration measures are included in the basins. Mr. Scalise said that all of this has been accepted as part of the peer review.

Mr. Scalise said that the neighbors have asked that they eliminate any outfall of stormwater on the easterly side of project. He detailed the engineering for diverting all of the water to the westerly portion. A second basin has been added to hold stormwater so as to not contribute to downstream flooding. There is an existing problem downstream toward Galway Court. Mr. Scalise said that he had asked the Board for a waiver for allowing work in 4% of the open space, up to 10% is allowed, but has increased that to 6% because more work is needed due to the downstream situation.

Mr. Scalise discussed with the Board the Foresight Land Services letter of January 8, 2018 on the subject of comments from the peer review by Foresight, in particular Item 4 "Stormwater", parts a and b. For #4b he felt that the Board might want to use Foresight's comment as a condition of approval. Mr. Scalise said that if he has time he would follow up with text that would provide to the Board some clarification. There was additional discussion regarding stormwater and Mr. Scalise said he will provide to the Board new detail with regards to the downstream culverts and stone diversion swale.

PK asked about differentiating the home designs as per the bylaw. Mr. Scalise said that they have changed the layout of a couple of driveways. The garages will be double garages, some side loads and some front loads. The colors of the homes will be different and there are two different style dormers. Some will not have dormers. Some will have porches and some will not.

KMV disclosed that she is a member of the Land Trust which holds a Conservation Restriction (CR) on another Ward property. She will file the appropriate disclosure with the Town Clerk.

Attorney Gobel who represents the homeowners of Birchwood Village said that their property is downhill and downstream from the proposed project and their concern is the intensity of work that will be right next to their boundary. He said that whoever is responsible for the Conservation Easement should have the resources to maintain it and recourse should the open space not be maintained. This, he said, should be addressed in the easement and condo documents. Attorney Gobel wants to continue to have the opportunity to provide input and even suggested that Town Counsel be consulted.

Mr. Scalise read through the 3 waivers requested. (Fairway Landings Special Permit Application of October 2017, page 10) Each waiver was briefly discussed. The Board discussed the items which needed clarification, or what additional information would be necessary in order for them to render a decision. GM will prepare a document for the Board which will include comments that have been made by the DPW, Fire Department, peer review engineer as well as her own comments that she had previously provided to the Board. Mr. Scalise will make a revision with regards to the swale and provide to the Board. Additionally the criteria that is required for granting a Special Permit that is outlined in the Zoning Bylaw should be referenced.

Mr. Kulig was satisfied with the efforts made by Mr. Scalise with regard to the stormwater. Ms. Miller pointed out on the plans the area of Birchwood that has a history of flooding. Mr. Scalise pointed out on the plans how the stormwater for the proposed project would be directed.

The hearing was continued to January 23, 2018 sometime after 6:00 PM, but the Board will not vote until they have an answer regarding the money owed to the Town. The Applicant agreed to the continuation.

**Update on Recreational Marijuana-**The Cannabis Control Commission has released for public comment 108 pages of rules and regulations. The date that this will be finalized is still early March of this year. Attorney General Jeff Sessions revoked an Obama era policy of looking the other way in states that had legalized uses of marijuana, and gave Massachusetts U.S Attorney Lelling discretion over enforcing federal marijuana laws in Massachusetts, where voters in 2016 legalized marijuana for adult recreational use. KS said that he feels that this will have no impact on zoning that has been approved by the people of this state. KMV said that an article she read in the Boston Globe on today's date would dispute that. The Board agreed that there is no point on working on this until the State released the finalized version.

The Board discussed the process of getting this to a vote in Lenox and the importance of giving a clear picture of what a vote, yes or no, would provide. GM said that Town Counsel will be coming out in February to discuss state regulations and how the Board should proceed. It was agreed that the Board would not be ready in May to take action, but believe they will be for November.

**Update on Short-Term Rentals-** The next Community Forum is set for January 20<sup>th</sup> at 10 a.m. The survey will be available for one more week. PK has added a new webpage to the website. A presentation for Short-Term Rentals was given to the Select Board on December 13<sup>th</sup>. DR had a meeting with Representative Smitty Pignatelli before the holidays and he believes that the state legislators will have regulatory framework early this year. It was agreed that the sub-committee (PK and DR) will review all of the community input and put together a report for the Board to review.

**Update on Master Plan-**GM and PK will start to work on a draft for a Request for Proposal (RFP) to hire a consultant to work on the update. Lenox is applying for a local Technical Assistance Grant through Berkshire Regional Planning Commission to do a joint economic development plan with the Town of Lee. It was agreed that there should be a steering committee for the Master Plan that would be made up of a small number of people who represent other boards/committees.

KS made a motion to close the meeting. DR seconded the motion and the Board voted to agree by a vote of 5-0. The meeting was adjourned at 830 PM.

Respectfully submitted,

