



OFFICE OF THE
PLANNING BOARD
TOWN HALL, 10 CENTRAL STREET, MANCHESTER-BY-THE-SEA, MA 01944-1399

Minutes of Planning Board Meeting
January 28, 2019 – Town Hall

Present: Members Coons, Delisio, Fish, Foley, Interim Chairman Mastrogiacomo, Sullivan;
Absent: Chairman Canny

Also Present: Atty. Jonathan Silverstein of KP Law; Zoning Board of Appeals Members Murray, Mellish, Howe, Dietrich, Mitchell; Board of Selectmen Driscoll, Jaques; Master Plan Russell; Staff Greg Federspiel, Christina St. Pierre, Sue Brown, Adele Ardolino, Helene Shaw-Kwasie. Member of the Public Marianne Coons, Alida Bryant.

Mr. Mastrogiacomo called the meeting to order at 7:00 p.m.

21 Forster Road, ANR, Bistrong

Atty. Mark Glovsky and Engineer Dan Ottenheimer appeared before the Board representing Jeffery Bistrong in his application for ANR at 21 Forster Road. Mr. Glovsky displayed the Plan, the purpose of which is to divide Lot 73 shown on Assessors Map 28 into Lots A and B, containing 7.88 acres of land and 4.00 acres of land with 186.53 feet of frontage and 217.50 feet of frontage, respectively. The lots will be serviced by a common driveway. Mr. Glovsky said the bylaw provides that the Planning Board and Building Inspector determine that there is adequate access to both lots by way of common driveway. He submitted an email from Building Inspector Paul Orlando stating that it appears that the plans are in compliance with the Zoning By-Law.

Mr. Glovsky said the common driveway meets the requirements of Section 6.2.8 of the Zoning Bylaw.

Lot D has an easement to go over the driveway to Lot A for Utilities and a Leaching Field.

Ms. Fish said she has no problem with the lot being separated off but has a problem with the common driveway showing on the plan as part of the package.

Mr. Glovsky said the common driveway appears on the map only to show that it can be done. The reason it is in the package is that there is always a question of whether the frontage is providing illusory access. A common driveway is more appropriate.

Mr. Glovsky said he would make a notation on the plan which would say, in effect, that endorsement of the plan does not constitute approval of the common driveway.

Upon motion made by Mr. Coons and seconded by Mr. Mastrogiacomo, it was VOTED to endorse as ANR #807 the Plan entitled Approval Not Required Plan for 21 Forster Road, Manchester, Massachusetts, Map 12 Lot 73, prepared by Mill River Consulting, dated 12/27/18 scale 1" = 50', annotated as follows: Endorsement of the plan does not constitute of the "18 ft. common driveway" depicted hereon. *N.B. The Plan that the Board signed incorrectly showed the Map as 12 instead of 28. Mr. Glovsky will have the plan corrected and return before the Board.*

Informational Meeting, Kopelman & Paige

Town Counsel Jonathan M. Silverstein, Esquire of KP Law appeared before the Board and made a Power Point presentation on Land Use Training, Planning Board and Zoning Board of Appeals.

Atty. Silverstein covered the following:

1 Overview of Land Use Permitting

Regarding Overview of Land Use Permitting, he spoke on how to Prepare to Hear an Application; Rely on Town Resources/Staff; the Planning Board purview; the Zoning Board of Appeals purview; where to look to find the Rules & Regulations; Special Permits; Variances; Comprehensive Permit; Site Plan Review; Subdivision Review; Approval Not Required (ANR) Plans.

He said that when an application form is located within the Subdivision Rules & Regulations, the Board is required to hold a public hearing to make a change to that application form.

He said the Board has 65 days from the filing date of a Special Permit application to open the hearing. There is no maximum of how many continuances. The Board has 90 days after close of hearing, which includes 14 days to vote, to file the decision. He referred to a Super Majority as a Quantum of vote. The permit must be exercised within 2 years under the Zoning By-Law. The State allows 3 years.

Comprehensive Permits under MGL 40B must go before the State and Conservation Commission.

Site Plan Review is a function of the local bylaw. It is not found in state law. It may not be denied, only conditioned, unless there is no set of conditions that can satisfy the standards set forth in the bylaw.

Subdivision Review creates two lots or more except where each has adequate frontage on a public way, an approved subdivision way, or a way in existence when the Subdivision Control Law became effective in the Town and having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction for the intended use. The Board cannot approve a one lot subdivision. Parcels do not constitute a subdivision. He discussed Standards, Waivers, Conditions, Surety and the Timeline. Planning Board must require surety [in a subdivision]. He advised that the Board ask for peer review to determine what is left to be done. Time lines can be extended.

Regarding ANR he discussed the standard and timeline. The Planning Board may deny an ANR if frontage is illusory, such as on a state highway. Section 5.1 says the Planning Board and the Building Inspector can determine that a common driveway is access, but the frontage still cannot be illusory. 5.1 of the Zoning By-law, say an applicant cannot get frontage from a common driveway; 5.1 provides access but the applicant still needs frontage.

2Public Hearings and Making a Defendable Decision and Avoiding Litigation

He said the steps are to advertise the application, conduct the public hearing, close the public hearing and deliberate and vote, draft the decision, perfect the decision, keeping minutes. He described the Best Practices for Conducting Hearings.

He said that in a Public Hearing, the procedure is that first the Applicant speaks, next the Board asks questions, and then the Public is heard. Before closing the public hearing, ask if anyone has any additional information to submit and explain that nothing further will be accepted from the public once the hearing is closed. Vote by majority vote to close the hearing. Vote by majority vote to make findings. Vote by super majority vote to make the decision, including in the motion all conditions and requirements of approval. If the motion to approve is made and fails to achieve the necessary number of votes for approval then the motion fails and the project is deemed denied.

He said to check the tax arrearage list and follow the GL 57 process. Anything can be denied if the taxes or other fees are in arrears. Ask Town Administrator for access to Counsel if legal issues arise, if extensions of time for the Board to act are obtained, be sure the extension is in writing and filed with the Town Clerk.

He said a member of the public speaking from the audience does not have to tell the Board his/her address.

For Outside consultants the authority is found under Chapter 44 Section 53G, for 40A it is found in Section 9, and for 41 it is found in 81Q.

If the applicant refuses to pay a consultant, the Board can deny the application.

Planning Board does not have to close a public hearing until it is ready to deliberate.

Important language to include in the Decision: “Any relief not expressly granted hereunder is denied.”

Under Chapter 41 81U when reciting the legal determinations and reasons for a decision, the Board must give specific reasons supporting the decision.

3 Appeals and Other Actions

Immediately notify the Town Administrator/Board of Selectmen

4 Open Meeting Law

New requirements can be found on the Web.

He discussed Site Visits; Executive Session Process; the use of Email; Remote participation; If there is a Conflict of Interest, a personal financial interest, the Board Member must recuse himself. Leave the room. If the Board member is an abutter, he can be heard under the First Amendment.

5 Public Records

He described the process of handling public records requests; Maintaining Public Records; Best Practices

Minutes:

January 14, 2019 deferred to next meeting

Discussion of Bylaw changes/revisions deferred

Ms. Brown has contacted Witten, KP Law and Boborowski. Each will provide a scope. \$50,000 is in her budget request.

CPC

Mr. Mastrogiacomo reported that CPC will be meeting this week.

Administrative

Town Administrator Federspiel invited the Board to attend the Selectmen meeting on February 4, 2019 at which the Master Plan and the Ocean Street grant will be discussed.

There being no further business to come before the meeting, and upon motion made by Mr. Mastrogiacomo and seconded by Ms. Fish it was VOTED to adjourn. Adjourned at 9:50 p.m.

Submitted,
April 8, 2019

Approved by the Board on April 8, 2019

Helene Shaw-Kwasie
Secretary

Connie Sullivan
Clerk

N.B. These minutes are not verbatim. They are the secretary's interpretation of what took place at the meeting.

Materials distributed to the Board and used at this meeting were:

Email from Building Inspector Paul Orlando

Power Point Presentation on Land Use Training, Planning Board and Zoning Board of Appeals