



MANCHESTER-BY-THE-SEA

PLANNING BOARD • TOWN HALL
Manchester-by-the-Sea, Massachusetts 01944-1399
Telephone (978) 526-6405 FAX (978) 526-2001

MINUTES OF THE PLANNING BOARD

April 11, 2022 6:30 p.m. Virtual Meeting

Join Zoom Meeting, Meeting: ID 812 4107 3326 Passcode: 165666 Mobile: 1.646.558.8656

MEMBERS PRESENT: Ron Mastrogiacomo, Chair, Sarah Creighton, Mary Foley, Chris Olney, Gary Gilbert, Christina Delisio, and Laura Tenny

MEMBERS NOT PRESENT:

SELECT BOARD MEMBER: Becky Jaques and Ann Harrison

STAFF PRESENT: Town Planner, Sue Brown, and Gail Hunter

GUESTS:

Mr. Mastrogiacomo called the Planning Board meeting to order at 6:30. Mr. Mastrogiacomo informed listeners the meeting was being recorded.

- **Public Comment** – There was no public comment this evening.

- **Correspondence**

Ms. Foley stated there were a half dozen items either not listed on the agenda or not included in the Board's folder. She specifically mentioned letters from Town residents and the Open Space letter. Mr. Mastrogiacomo indicated he did not include the letters from residents because they were forwarded to all Board members. Ms. Brown stated she did not have a signed copy of the Open Space letter but will include the copy she has in the folder. Ms. Foley would like all correspondence listed on the agenda.

Chair's Comment: Mr. Mastrogiacomo recognized Ms. Brown's work on behalf of the Board noting that much of her work goes unappreciated. Board members may have disagreements, but disagreements do not mean disrespect. Ms. Brown brings new and constructive ideas to the Board and our job is to build consensus and, in the end, voters decide on the Board's recommendations.

- **ANR 208 Summer St. (Karas/Glovsky)**

Mr. Glovsky, Attorney and Ms. Colbert, Engineer with Hancock Associates presented the information on ANR request for 208 Summer Street. The property is located on the north side of Summer St. in Zone C, it is 8.5 acres proposed to be divided into two lots. Lot 1 is to the east side of the property and will be 2.23 acres with 150' of frontage, Lot 2 will be 6.17 acres with 584' of frontage.

Mr. Glovsky understands the criteria for meeting an ANR endorsement requires the applicant to address five points.

- 1) Is the frontage on a public way? The frontage is on Summer Street, a public way.
- 2) Does the frontage meet the minimum requirement of 150' in District C? The divided lots each have 150' or more frontage.
- 3) Each lot must obtain access from frontage. There are no impediments to accessing the lots.
- 4) Adequate access from street. Summer St. is a safe wide street.
- 5) Practical access, the answer to this question is also yes and additional information was included for the proposed common driveway. Additionally, a letter from Ms. Colbert was included stating the proposed common driveway would be constructed to meet all requirements in the Zoning By-Law.

Mr. Glovsky stated he would be happy to answer the Board's questions.

Ms. Foley asked if the driveway was in existence. Mr. Glovsky stated it is not.

Mr. Gilbert stated the plan anticipates not requesting two curb cuts and therefore has included a common driveway. He suggested when the request is filed with the Registry that the plans include only one curb cut and the common driveway. Mr. Glovsky stated the project is requesting the endorsement of the Planning Board and he understands that the Building Inspector, Mr. Orlando, will need evidence of this request prior to deciding on and issuing a building permit.

Mr. Gilbert is recommending endorsement of the project. Ms. Creighton agreed. Ms. Delisio stated this is not the first time this project has been before the Board and asked about prior decisions. Ms. Colbert came before the Board to discuss dividing the property into three lots in November 2021. Ms. Creighton noted that was an advisory discussion not an application. Ms. Delisio asked for historical information to be included with meeting materials.

Mr. Gilbert stated the history is not relevant. Ms. Delisio asked that the record reflect she had been interrupted and spoken over.

Mr. Gilbert moved to approve the ANR (with the next sequential number) request based on the Plan of Land dated March 9, 2022 with a scale of one-inch equals 40' at 208 Summer St.; Ms. Creighton seconded the motion. The motion passed unanimously by roll call vote.

Discussion on the above Motion

Ms. Foley stated in reading the By-Law the common driveway needs to be in existence to be approved. Mr. Glovsky replied that the Building Inspector requires confirmation that access is available. Mr. Gilbert added the Planning Board decides there is feasible access. Ms. Colbert confirmed that she had several conversations with Mr. Orlando, and he requires approval from the Board for the proposed common driveway.

• **Public Hearing (7:00 p.m.)**

- 189-193 School Street, ZBL Section 6.9, Site Plan Approval for greater than 10 parking spaces, Cornerstone Church, continued from 3/14/22

Ms. Creighton moved to open the Public Hearing on the continued application of Cornerstone Church from March 14, 2022; Ms. Tenny seconded the motion. The motion passed unanimously by roll call vote.

Ms. Foley thanked Ms. Tenny for writing the Decision and asked that Ms. Delisio's first name be corrected to Christina as this is a legal document. Additionally, she suggested adding a date to the 20 days from filing to be more specific. Ms. Tenny stated she would correct Ms. Delisio's name, and the date as noted is a TBD she will add the date and place the document on letterhead.

Mr. Mastrogiacomo opened discussion on requesting the Applicant provide a performance bond as indicated in Section 6.9.7 of the By-Law. Ms. Creighton thought a modest bond addressing work done in the public way including sidewalk, curb cut, and sewer connections was advisable. Following discussion Ms. Creighton proposed the following underlined language for addition to the Decision.

The Applicant will provide a surety bond equal to the sum of the work in the public way at the time of permitting and upon substantial completion of the work the Planning Board will authorize release of the bond upon advice of the Building Inspector and the DPW Director.

Ms. Creighton moved to close the Public Hearing on the continued application of the Cornerstone Church from March 14, 2022; Mr. Gilbert seconded the motion. The motion passed unanimously by roll call vote.

Ms. Creighton moved to approve the Cornerstone Church Decision as read and amended; Mr. Olney seconded the motion. The motion passed unanimously by roll call vote.

Mr. Alden Drake thanked the Board for their efforts on behalf of the Cornerstone Church.

- **ANR 1 Spy Rock Hill (Kinder)**

Tim McDonald and Mark Glovsky presenting on an ANR application filed under the name of Elizabeth Kinder.

Mr. McDonald outlined his plan to divide the current lot into two lots with two frontages. One frontage on Spy Rock Hill which is the existing home and new frontage on Sea St. would support the lot for a new home with frontage of 270' on Sea St. As part of Mr. McDonald's due diligence, he met with the Building Inspector, DPW Director and Town Planner and none of them saw any issues with respect to an approval of the ANR application. The proposed driveway is 50' from the current intersection, with a 12' rise, 9% slope, and is 127' in length.

Mr. Gilbert inquired about the height of the retaining wall noting it varies and asked if that was due to ledge. Mr. McDonald replied that was correct.

Ms. Creighton noted the proposed driveway is in the front set back. Mr. McDonald replied that is correct. Ms. Creighton also confirmed that cut and fill would require 300 cubic yards of fill and there would be no ledge removal. Mr. McDonald replied, the fill

volume was correct, but the ledge will require some removal. The ledge will be removed by jack hammer and backhoe, no blasting will take place. Ms. Creighton inquired about the property owner. Mr. McDonald stated it is owned by the estate of Elizabeth Kinder and the estate has not yet transferred. Ms. Creighton stated the application will need to be refiled to reflect accurate ownership.

Ms. Foley asked about the 9% slope and how that was calculated Mr. McDonald explained the math calculation. Ms. Foley also asked about the need for a curb cut noting the proposed driveway was close to a difficult intersection and safety is a concern.

Ms. Tenny noted that in reviewing the ANR Handbook she observed no practical existing access and the proposed access is entirely within the set back. She stated that this is not passing the test for her given the topography, the location is neither reasonable nor practical. Mr. Olney agreed with Ms. Tenny adding there is hypothetical access and to put in a driveway will require a Special Permit. Mr. Olney is not sure of the sequence of the process but believes there are some additional preliminary steps necessary prior to endorsing the ANR.

Mr. Mastrogiacomo believes the Board needs to seek advice of Town Counsel and suggested withdrawing the ANR application and refile with correct owner. Additionally, he agrees with Ms. Tenny and Mr. Olney around practical access, he agrees with Ms. Foley around the need for a curb cut and the question around a four-way intersection. He added the removal of ledge which is under Section 6.12.2 (d) of the Zoning By-Law will require a Special Permit.

Mr. Gilbert stated the Board appears to be falling into the Building Permit zone noting the Board has a stamped engineering drawing and the proposed lot has 270' of frontage. Mr. Gilbert believes the ANR should be endorsed.

Ms. Delisio would like the Board to seek advice from Town Counsel. Mr. Glovsky agreed stating he was not the Board's lawyer on this application. Mr. Glovsky agrees the application needs to be refiled under the correct owner's name. He is hopeful Town Counsel will agree with Mr. Gilbert and that the construction of the driveway is feasible. Mr. Glovsky would like the applicant to Withdraw Without Prejudice, refile and hopefully the Board will have an opinion by the next meeting on May 9, 2022.

Ms. Creighton moved that the Planning Board requires advice of Town Counsel concerning the following: The Planning Board expects receipt of an ANR plan with frontage along Sea St. the existing conditions are ledge and steep slopes, and, in the Board's, opinion render the access unavailable. The Applicant's application is to include a concept plan to construct a driveway within the front set back. The plan shows considerable fill and possible ledge disturbance within the set back. The Board requests advice concerning denial of endorsement and the denial of ANR for the following reasons:

- *Practical access not existing refer to Poulos v. Braintree, 413 MA 359 (1992)*
- *Proposed access does not exist or is not adequate*
- *Proposed access would require a curb cut into a four-way intersection with a blind corner*
- *Curb cut permit has not been requested or received by Planning Board*

- *Proposed access requires removal of ledge and 300+ cubic yards of fill and appears to require a Special Permit under Zoning By-Law 6.1.2 and no Special Permit has been applied for or granted.*

Mr. Olney seconded the motion. The motion passed unanimously by roll call vote.

Discussion on the above Motion

Mr. Gilbert noted the Board had an Engineer's Design Plan. Mr. Mastrogiacomo stated the plan was received and posted at 3:00 p.m. this afternoon.

Ms. Tenny stated she had heard most of the motion and added the Board is asking for advice when there exists distinct physical impediment. Ms. Tenny referenced page 26 of the ANR Handbook under topography.

Ms. Foley requested the motion include request to resubmit application. Ms. Creighton stated the Withdrawal Without Prejudice asks for an ANR Plan with application with frontage on Sea St. Mr. Glovsky suggested that the plan be forwarded to Town Counsel with request for opinion so the issues are clear for Town Counsel to interpret.

Ms. Creighton moved to accept the Elizabeth Kinder ANR application request for Withdrawal Without Prejudice; Mr. Olney seconded the motion. The motion passed unanimously by roll call vote.

Public Comment

Scott Susko, 6 Spy Rock Hill – Mr. Susko asked if the request to Town Counsel could be made available to the Public. Mr. Mastrogiacomo stated he would make that available based on Town Counsel's position.

Steve Colbert, 9 Sea St. – Mr. Colbert is concerned about run off from the proposed driveway. His home currently has water in the basement during major storms and sees the proposed driveway creating additional problems for him downhill.

• **Update Draft Zoning By-Law Changes (Creighton/Olney)**

- Review and possible final vote to move the following to Public Hearing:
 - Section 6

Following discussion, the Board concluded Section 6 would require an additional workshop prior to the Public Hearing in mid-May.

The Board discussed and recommended, moving Storm Water to the General By-Law. Ms. Brown confirmed Storm Water is typically in General By-Laws.

In the Section 6 Workshop and discussion the Board will also address Accessory Dwelling Units (ADU). Also for further discussion is the issue of the Flood Plain By-Law. Ms. Creighton stated she has not seen a specific proposal around moving this and would like to hold this for further consideration.

- Residential Cluster

The Board had previously moved to bring Senior Housing forward at Special Town Meeting.

The Board previously held a Public Hearing on Residential Cluster. Ms. Foley proposed creating a table with all proposed changes for presentation at Special Town Meeting.

The recommended changes are highlighted in the below PDF. Mr. Olney walked the Board through the changes clarifying areas where members had questions.



Cluster Housing Current and Proposed.pdf

Following discussion, it was concluded that Residential Cluster will be moved forward to Special Town Meeting on June 11, 2022 with a focus on minimum size and discussion of density bonuses. Ms. Tenny suggested highlighting environmental and conservation issues as a reason to support

- Review GVW issue (General By-Law Section)

GVW refers to Gross Vehicle Weight and refers to the size of a commercial vehicle that can be parked on a residential lot by right. Currently the By-Law allows one commercial vehicle by right on any residential lot. There was a proposal to put a cap on the size of the vehicle and the Board decided on a size of 14K lb. Some prefer to just leave as is, given that according to the Building Inspector he receives no complaints on this. GVW is proposed to move to General By-Laws. The Select Board could move as is or could include a size.

- Finalize Dates for Public Hearing and Agendas

Board agreed to schedule the Workshop for Tuesday, April 26, 2022 at 5:30 p.m.

- **Town Planner's Report**

Mr. Mastrogiacomo asked if any Board members had questions about the Town Planner's report. Ms. Foley asked about the Downtown Improvement (DIP) Parking Study and survey and why the survey is limited to businesses and multi-family housing. Ms. Brown stated that question would need to be answered by the DIP.

Ms. Tenny asked about the Forester and if work was progressing. Ms. Brown stated the Forester has not been able to complete the work and has not replied to repeated requests for updates. Ms. Brown has identified another Forester from Western MA who has indicated he will be able to complete the work in the remaining time frame. Ms. Tenny added she appreciated the Town Planner's reports and looks forward to a time post zoning changes when the Board can engage in discussions around the Town Planner's Report.

- **Sub Committee and Liaison Reports –**

Ms. Foley asked if the Board was planning to present the proposed LCD changes to the Finance Committee. Mr. Mastrogiacomo stated the Finance Committee has already endorsed the proposed changes to the LCD. Ms. Foley asked how that happened, Mr. Mastrogiacomo stated Mr. Weld, the newly appointed Finance Committee liaison to the Planning Board, attended Planning Board meetings and reported back to the Finance Committee who made their recommendation at their last meeting.

- **Approval of Meeting Minutes 2/8, 2/14, 2/28 and 3/14**

The Board discussed minutes and edits prior to approving. Ms. Creighton agreed to note all proposed edits. Minutes will be approved as edited.

Ms. Creighton moved to approve the minutes of February 8, 2022 as amended, Mr. Mastrogiacomo seconded the motion. The motion passed 5 – 0.

Ms. Creighton moved to approve the minutes of February 14, 2022 as amended, Mr. Olney seconded the motion. The motion passed 5 – 0.

Ms. Creighton moved to approve the minutes of February 28, 2022 as amended, Mr. Olney seconded the motion. The motion passed 4 – 0. Ms. Tenny abstained she was not in attendance.

Ms. Creighton moved to approve the minutes of March 14, 2022 as amended, Mr. Mastrogiacomo seconded the motion. The motion passed 5 – 0.

The Board decided to hold the Minutes for 3/21 and 4/4 to the next meeting.

- **Meeting Schedule**

Additional Zoning Workshop
April 25, 2022 Annual Town Meeting
May 9, 2022
May 23, 2022
June 11, 2022 Special Town Meeting

- **Adjourn**

Mr. Mastrogiacomo moved to adjourn the meeting.