

PLANNING BOARD MINUTES

NOVEMBER 29, 2018

Public Hearing

Present: Chairman Stephen Garvin, Vice-Chairman Peter Abair, John Hincks, Charles Karustis, Nancy Kilcoyne, Justin Finnicum, Beth Suedmeyer (Acting Director of Planning and Community Development), and Jonathan Silverstein, Town Counsel.

The statutory requirements as to notice having been complied with, the meeting was convened at 7:30 p.m. in the Lower Town Hall.

Public Hearing: Amend Article IX, Zoning Bylaw, by inserting Zoning Bylaw 4700A The North Road Residential Overlay District, to allow for multi-family housing and accessory commercial uses, subject to a master plan approved by Town Meeting, and to amend the Zoning Map to add the North Road Residential Overlay District, which shall be coextensive with the existing Research District.

Chairman Garvin opened the public hearing to discuss the two zoning articles for the proposed Melone site development and the December 11, 2018 Special Town Meeting. The Public Hearing notice was read aloud. Chairman Garvin introduced Acting Planning Director, Ms. Suedmeyer to provide a brief overview of the Articles; and Town Counsel, Jonathan Silverstein; who provided amendments and review of the two articles.

Ms. Suedmeyer reviewed Town Meeting Article 1: North Road Residential Zoning Overlay District (NRROD).

Ms. Suedmeyer stated that the regulatory process for this residential zoning overlay district will be similar to the process taken with the MUOD at Meadow Walk. She said that the Master Plan associated with this overlay district needs to be presented and approved at Town Meeting for the development to be able to go forward; and that this plan is primarily focused on the Quarry North proposal. She affirmed that no other development within the research district, would be allowed in the future, without Town Meeting approval.

Ms. Suedmeyer maintained that within the overlay district that has been drafted, there is a commercial use provision, not to exceed 2,000 square feet, adding that there is an option for assisted living, to be included in the development.

Ms. Suedmeyer detailed that discussion regarding the proposed zoning changes took place at the Planning Board meeting last night, and stated that those changes were submitted to Town Counsel for consideration at this hearing.

Chairman Garvin suggested going through each amended item, primarily in the NRROD Article; and he explained that the first action would involve amending the Article 9 bylaw by inserting zoning bylaw 47A.

Attorney Silverstein stated that the Board discussed this draft zoning in considerable depth last night; and said that this residential overlay district would allow an increased residential density, and limited

commercial use; and possibly assisted living, as well. He stated that per recommendation of the Planning Board, he made the following changes:

1. Section 4710A. – Purpose -, which would change its language in the last sentence of that section, from “diversify and expand the Town’s economy and local job opportunities through economic activity and private investment in commercial and residential uses,” to: “through economic activity and private investment in primarily residential uses with limited commercial use.” Attorney Silverstein stated that was a good change, and emphasized that the commercial use proposed in this district, as described in the proposed Master Plan; is ancillary to the residential use, and is intended to be a convenience for the residents of this particular development.
2. In Section 4741A – Master Development Plan Requirements - subsection a. and b., the language including “available GIS information” was deleted. He said that the intent of the Board, was not to limit the source.
3. Chairman Garvin stated that the Board had a discussion about section a., and the rationale for adding “and wetlands resource and other jurisdictional areas,” was included as the included language allows the developer to understand the risk in that aspect. Attorney Silverstein stated that sounded fair, and thought that any developer would do their due diligence before going too far into the planning, and later, a reference in the site plan review section, was added to clarify what information needs to be submitted to the Board, post-Town Meeting, which would include all the wetlands characteristics of a site.
4. Attorney Silverstein went on to explain that in subsection “c.,” Roman numeral “I,” the word “general” was removed from “The general location and areas of proposed development.” Attorney Silverstein thought that change was fair. Chairman Garvin also requested that the “general” be deleted from subsection “iii,” as well. Attorney Silverstein added that the only caution he would offer on that aspect, was that prior to Town Meeting, one would not expect a full geotechnical survey of a site, and conditions of a site; might affect where roads would go. He suggested perhaps leaving more flexibility for that aspect, as location of interior roadways may change; but ultimately it was up to the Board. Chairman Garvin stated that the Board would want to remain consistent, and strike the term “general” in the “iii” subsection, as well as, within the mentioned sections. Attorney Silverstein agreed to do so, and confirmed that the typo in 4741 A. subsection d, had been corrected.
5. In the next section 4742A – Final Plan Approval - Attorney Silverstein referenced an addition to 6250 (the submittal requirements for site plan approval) which now must be incorporated with what has to be provided to the Board, “the applicant shall provide to the Planning Board, at a minimum, all of the items required pursuant to Section 4741A and Site Plan Review,”
6. Attorney Silverstein noted that 4742A, subsection g. was amended by substituting the language “parcel(s),” instead of “area,” and Attorney Silverstein agreed with that change, since a certified abutter’s list was being referred to.
7. In the section 4744A – Planning Board Decision - subsection a., Attorney Silverstein stated that the notice was modeled on the MUOD from Meadow Walk, and the reference to Town Meeting should not have been included in the section; and was eliminated.
8. Attorney Silverstein noted that in section 4751A – Minor Modification – subsection a., that it may be that a minor modification would involve some small ancillary structure/s, (examplng a pumping house or an irrigation house), which might not require full plan review. He noted the language added: “Do not involve the construction of an additional building not included in the approved Master Development Plan, with the exception of ancillary buildings not exceeding 500 square feet at the discretion of the Planning Board.” Attorney Silverstein recommended a square footage of 500 to 600 square feet. The Board agreed that 500 square feet was a reasonable number to include.
9. On Page 5 of the North Road Residential Overlay District document, Chairman Garvin included that 4752A – Project Modification Review - the Board had discussion regarding residential modification. Attorney Silverstein acknowledged the merit of the reference, and added that the structure of this

Article notes that there are certain types of plan modifications, that the Board can approve of informally, without a public hearing. He provided detail regarding other types of modifications; that would require a public hearing, and approval of the Planning Board; and continued that a third type of major modification, would require approval of Town Meeting. He stated that the bylaw provides a list of minor modification triggers, and anything above those thresholds, pushes into full plan modification; and in section 4752A, there are certain types of modifications that would not qualify for full plan modification by the Planning Board, and would have to present at Town Meeting. He reiterated that the bylaw reflects a three-tier modification process; administrative minor modification, full plan modification, and Town Meeting modification. Attorney Silverstein added that the “catch-all,” is the intermediate level of review, before the Planning Board, which requires a Public Hearing for full plan modification. He said that anything not being classified as a minor modification, or requiring Town Meeting approval, fall into the intermediary category; 4752A, defines that even full plan modification, cannot approve two types of modifications – one, being an increase in residential units, or an increase in commercial space, above 20% of what was originally proposed. He noted that anything else, the Board can approve, as a plan modification. Attorney Silverstein stated that the Board was considering the scenario of the over 5% increase in residential area, and the answer was, that as long as the increase is proposed in residential units, the Board has the right to approve or disapprove, an increase in gross floor area of the residential structures. Mr. Hincks affirmed that the decision would have to be made through the Public Hearing process, in that case. Attorney Silverstein confirmed that statement. Ms. Suedmeyer queried that the number of bedrooms would not address this concept. Attorney Silverstein replied that it is silent on the number of bedrooms, and noted, that it is likely to be the subject, as in this case; and likely to be the subject of any future case of the Development Agreement.

10. On page eight of the NRRD document, Attorney Silverstein directed to section 4767A – Lapse – where the Board wanted to add some language to the timely prosecution of applications, which he felt was appropriate; and amended the language to: “the Applicant has in a timely manner applied for and diligently pursued such permits and that such delay is not the result of the actions or inactions of the Applicant.” In the same section, Attorney Silverstein noted a capitalization oversight, and several typographical errors, that were caught by the Board.

Chairman Garvin asked if anyone from the public had any comments. No one came forward with comments.

Chairman Garvin suggested that the Board accept these revisions to the zoning plan.

On motion unanimously duly made and seconded, it was

VOTED: That the Planning Board recommend that Town Meeting adopt a proposed Amendment to the Sudbury Zoning Bylaw to add a new Section 4700A (North Road Residential Overlay District) under Article 1 of the December 11, 2018 Special Town Meeting Warrant, in the form discussed and approved at the Planning Board’s public hearing held on November 29, 2018; and, further, that the Acting Planning Director prepare a report to Town Meeting reflecting such recommendation and attaching the proposed Section 4700A.

Public Hearing: Amend the Zoning Bylaw by inserting Zoning Bylaw 4700B the Melone Smart Growth Overlay District, to allow for mixed commercial and residential uses on a portion of the so-called Melone Property, and to amend the Zoning Map as shown on a plan entitled “Melone Smart Growth Overlay District”, dated November 13, 2018.

Chairman Garvin announced that the Board was now opening the second Public Hearing in regards to amend the zoning bylaw by inserting zoning bylaw 4700B, the Melone Smart Growth Overlay District (SGOD). The Public Hearing Notice was read aloud.

Chairman Garvin said that the Board did not spend as much time discussing the SGOD at its previous meeting, and recognized that Article 2 is more in the dictate of state regulation. He added that the Town zoning consultant, Ms. Barrett, is very familiar with the workings of the DHCD (Mass. Dept. of Housing and Community Development) and is viewing this aspect, insuring that it falls in line with what is being sought by that state regulatory board.

Attorney Silverstein stated that some of the changes in the SGOD are semantic, and the changes were primarily made by Ms. Barrett, including:

1. Definition of Affordable Unit are included on the Town's subsidized housing unit inventory.
2. New definition added to the term "Governing Laws" in reference to 40R, and the code of Mass regulations adopted thereunder.
3. New definition was added; PAA (Plan Approval Authority), referencing regulations to adopt.
4. Within the "Authority and Applicability" section, a subparagraph 2 was added, indicating that the administrating officer/s were to be the building inspector.
5. Some references to "Administering Agency," changed to "monitoring agent," throughout.
6. Section 6 – Administration –new language added, to indicate that the monitoring agent, the entity enforcing the affordability restrictions on the affordable units, will be designated by the Town Manager.
7. Section G – Dimensional and Other Requirements – reflected several deletions, an amendment of Maximum Residential Development. Attorney Silverstein noted that the section was amended because density was already depicted as 20 units per acre, which would cause inconsistency, and limits density of units, and in this case; since the 40R site is close to six acres, and the statute requires that zoning allow for density of 20 units of "developable acre." He reiterated elimination of this language, because the density is going to be worked out, as part of the Development Agreement. Mr. Hincks mentioned that this document depicts zoning, and the zoning needs to comply with Mass. Laws, but the developable land for this particular project; specifies 101 units. Chairman Garvin detailed that this zoning is only for this project, as that is the only area being approved for the Smart Growth; and could be the blueprint for another project, which would require going through the process to approve another Smart Growth area. Mr. Hincks acknowledged the process.
8. Within the "Parking Requirements," section, Attorney Silverstein noted that Ms. Barrett added a provision that states "the maximum number of parking spaces provided in a development project, shall not exceed an average of 1.75 per unit." He stated that the presumption here, is that this might be a DHCD requirement, and DHCD prefers to see it reinforced with language. Chairman Garvin asked about the increase/decrease of one bedroom units. Attorney Silverstein responded that the proposal depicted 51 one- bedroom units, 42 two- bedroom units, and 11 three-bedroom units; which reflected a higher percentage of one bedroom units. In regard to those numbers, Attorney Silverstein and Chairman Garvin agreed that there would not be an issue with parking.
9. Change of Site Plan, to Site approval language.
10. Attorney Silverstein referenced the last page – Annual Update – the requirement specifies that the Board of Selectmen will be receiving information from the property owner, to update the DHCD.

Vice-Chairman Abair questioned Section F – Housing and Housing Affordability – stating, and asked if that language "at least 25%," might be preferable; or was that language prescribed by DHCD. Attorney Silverstein stated that he did not think that it would be, but the addition of that term was not going to offend DHCD; and thought that more is better as far as the DHCD is concerned. Attorney Silverstein proceeded to add the "at least" language, recommended by the Board.

Chairman Garvin wanted to know exactly within the Smart Growth zoning location the commercial property would be located; adding that there was a description of it in the Plan, entailing that 4500 square feet, might want to be defined differently; depending on the exact location. Attorney Silverstein stated that he could have the developer fill in the gaps. He went on to say that in terms of commercial space, he believed that the designation of commercial space included space that under the NRROD bylaw, would not be considered commercial space, as it is ancillary to the residential usage; such as a fitness facility. Chairman Garvin suggested that the developer might want to clarify that on the Development Plan, and how it is defined. Chairman Garvin added that because the NNROD limits the coverage to 2500 sq. ft., the Board may want to study this further. Chairman Garvin recommended that someone from the Quarry North Development might want to provide some thoughts on this aspect.

William Henchy, Attorney for Quarry North, stated that the proposed retail is located within the Smart Growth Development District, and is proposed to be inside one of the buildings. He then referred to the Master Plan/rendering plan. Attorney Henchy detailed that there are three proposed buildings within the SGOD, and he identified the locale on the overhead graph. In regard to the definitional issue, Attorney Henchy stated that Quarry North, is proposing no more than 2,500 square feet of actual retail; and the balance of that included a leasing office, meeting space, fitness room, and so forth. He added that Quarry North would be willing to amend that and description on the Master Plan; for clarity. He assured the Board, that there was no intent to go beyond the 4,500 square feet of retail space. Chairman Garvin stated that within the limit of the definition, it would be cleaner. Attorney Henchy stated that in an earlier iteration of the draft zoning, these areas were defined separately; so the development did not want to under disclose, and again agreed to correct that aspect, and get a revised version to the Board for publication on the web, and for the records. Attorney Silverstein concurred with the recommended change.

Chairman Garvin stated that the Board also wanted a 75-foot dimension for the Northwood border, to be included on the Master Plan. He said that having that dimension memorialized on the plan, would be a key component. Attorney Henchy added that the development team met with the people from Northwood, and said that he would be happy to make that change, as well. Mr. Karustis suggested that it would be helpful to show the contiguous parcels in Concord; so that the Board could confirm where the setback was. Chairman Garvin mentioned that the setback issues with the buildings along the north side, on the Concord line; appeared to be right on the line; and suggested adding an outline depicting that Quarry North owns that property. Attorney Henchy added that one of his clients raised that same issue; and he would be happy to illustrate the contiguous parcel/s, so it would not appear that Quarry North is right up against the rear lot line. Mr. Karustis agreed that the proposed addition, would be helpful.

Ms. Suedmeyer questioned if the Board would want to show a rear lot setback in Concord, for any proposed future-residential development. Attorney Silverstein stated that if there were some future development proposed for the Concord land, the developer would have to file a definitive subdivision plan with the Concord Planning Board, and they would need to complete setback documentation. Chairman Garvin added that in this case, the setback gets defined in another town, but there is no definition for a setback over the Town line.

Attorney Henchy stated that his take was, that there is a rear yard setback in Sudbury, so that Quarry North could not propose a subdivision that would render the entire project nonconforming regarding Sudbury zoning. He detailed, that if there were to be a subdivision, there would have to be a rear yard showing that the subdivision meets a minimum of the requirements of this zone; otherwise the whole project would be rendered non-conforming, and the Quarry North did not want that. He stated that the question will be in determining what the Concord setback is, and if Quarry North would have to comply with the greater of the two. Mr. Henchy stated that he did not have the answer to that question. Chairman Garvin stated this aspect falls outside of Sudbury jurisdiction. Attorney Henchy understood that fact, and

added that it is conforming as it stands now, but if there were a subdivision; that is when that aspect would come into play. He stated that he felt that Quarry North would come back to the Planning Board regarding a subdivision of this parcel. Chairman Garvin detailed that knowing that there is a potential for six-single family lots in Concord; Quarry North might want to consider that, when creating that back lot line; which could become a challenge, if creating six lots along that lot line.

Mr. Hincks suggested, hypothetically, that if the Concord back yard setback were ten feet, and Sudbury's is 75 feet; you would not be able to put homes on the Concord line that are 12 feet away from this property line, as that does not conform with Sudbury's setback; even though the homes are being built in Concord. Attorney Henchy stated that he agreed with the premise that it would be the greater of the two, and agreed that the Board's analysis was correct. He then questioned, what the Board wanted the developer to do with the plan. Mr. Karustis reiterated that he wanted to put the parcel boundaries on the plan now, and stop there. Chairman Garvin maintained that the Development Plan, affects the MUOD, as well as the NRROD; and the Board just wanted to understand how it looked, so that no flags would be raised.

Chairman Garvin asked if there was any other comments from the public regarding this proposed zoning. No one came forward with comments.

Attorney Silverstein confirmed that this article would only be acted on by Town Meeting, and this statute prohibits the Town from voting on this 40R zoning, until DHCD has given its preliminary approval.

Chairman Garvin explained that the Board needed to vote on this aspect tonight, before the application can go to DHCD; and DHCD only accepts applications on the last day of the month. Attorney Silverstein stated that the application would be filed tomorrow.

On motion unanimously duly made and seconded, it was

VOTED: That the Planning Board vote to approve the proposed Section 4700B – Melone Smart Growth Overlay District Zoning Bylaw, to submit an application to the Department of Housing and Community Development for approval of the Melone Smart Growth Overlay District pursuant to General Laws Chapter 40R, and to authorize the Town Manager to sign said application on the Town's behalf.

Attorney Silverstein stated that there would be a separate motion, since this is a Public Hearing both for 40R and 40A for Town Meeting to act on the 40R Zoning Bylaw, and if the Town receives the DHCD approval, would also take the report to Town Meeting, so that would need the second motion.

On motion unanimously duly made and seconded, it was

VOTED: Pursuant to G.L. c.40A, §5, that the Planning Board recommend that Town Meeting adopt a proposed Amendment to the Sudbury Zoning Bylaw to add a new Section 4700B (Melone Smart Growth Overlay District) under Article 2 of the December 11, 2018 Special Town Meeting Warrant, in the form discussed and approved at the Planning Board's public hearing held on November 29, 2018; and, further, that the Acting Planning Director prepare a report to Town Meeting reflecting such recommendation and attaching the proposed Section 4700B.

Attorney Silverstein asked if the Board wanted to schedule a short meeting before Town Meeting, on December 11. Chairman Garvin stated that the Board would schedule that meeting for 7:00 p.m. at LSRHS before the Town Meeting. Attorney Silverstein affirmed that it would be best to take another official vote on the approval of the amended Master Plan, before Town Meeting, since that aspect was not

included in this evening's agenda. Ms. Suedmeyer said that she would check the availability of meeting space at LSRHS.

Chairman Garvin asked if this would be advertised on the web page only. Ms. Suedmeyer responded that Town Clerk would post it as well.

Chairman Garvin closed the Public Hearing at 8:20 p.m.