

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

John R. Bethoney, Chair
Michael A. Podolski, Esq., Vice Chair
James E. O'Brien IV, Member
Jessica L. Porter, Member
James McGrail, Esq., Member



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Jeremy Rosenberger
Planning Director

PLANNING BOARD
MEETING MINUTES

June 13, 2019, 7 p.m., Lower Conference Room

Present: John R. Bethoney, Chair
Michael A. Podolski, Vice Chair
James E. O'Brien IV
Jessica L. Porter
James McGrail, Esq.
Ralph I. Steeves, Associate Member

Staff: Jeremy Rosenberger, Town Planner
Jennifer Doherty, Administrative Assistant

The Pledge of Allegiance was recited. Plans, documents, studies, etc., referred to are incorporated as part of the public records and are on file in the Planning and Zoning office.

Review of Meeting Minutes

Chair John Bethoney stated he would call out the meeting minutes they are reviewing and if anyone has any issues regarding those minutes they shall state pass and they'll come back to those. Meeting minutes of August 11, 2018, September 14, 2019, September 20, 2018, September 29, 2018, October 13, 2018, October 27, 2018, November 3, 2018, November 10, 2018 and December 8, 2018 were approved as presented, with a motion made by Mrs. Porter, seconded by Mr. Steeves, and approved 5-0.

The Board discussed the July 7, 2018 needed to be revised. The Board discussed July 21, 2018 minutes and had no changes. A motion to approve the July 21, 2018 meeting minutes was made by Mr. Podolski, seconded by Mr. O'Brien and approved 5-0.

The Board then discussed getting caught up on other meeting minutes and if meeting minutes could be prepared for meeting priors to upcoming meetings. The Town Planner expressed that is the goal, but due to the length and number of Planning Board meetings, that could be difficult to accomplish. Mr. Bethoney stated they need to find a way to produce the meeting minutes a more expeditious way. The Town Planner said typical turnaround by Planning Board is a couple months due to the length of Planning Board meetings. Mrs. Porter asked is draft minutes could be provided sooner. Mr. Rosenberger stated unfortunately that wouldn't make a big difference.

Mr. Bethoney stated he would like to get back on track with meeting minutes as quickly as possible. Mr. Rosenberger stated that all meetings of the Planning Board are recorded by Dedham TV and are therefore easily accessible after a Planning Board meeting for review.

Dedham 2030 Master Plan

Chairman Bethoney asked the Town Planner to provide an update on the Dedham 2030 Master plan. Mr. Rosenberger stated the Town has extended the date for nominations to serve on the next Master Plan process, entitled Dedham 2030. Nominations are due by July 1 and can be found on the website. He discussed the goal is for the Board to review/select committee members by the end of the summer and the Master Plan process to begin in the fall.

Dedham Square Planning Study Committee

Chairman Bethoney stated that before they get started with introductions of applicants for the Dedham Square Planning Study Committee, he would like to have a moment of silence for Amy Cusack who recently passed away. She was a former admin for the Planning Board, starting back in the 1960s. She was friends with everybody in town hall.

The Board heard statements of interest from the following Dedham residents interested in serving on the Dedham Square Planning Study Committee, where the Board has the ability to select five at-large members for the proposed thirteen member board: Lacey Cohen of 50 Wentworth Street, Susan Fay of 295 Walnut Street, Micah Flynn of 33 Eleanor Street, Andrew Haley of 72 Barrows Road, Tara Ikenouye of 39 Clark Street, Marie Louise Keough of 858 High Street, Monica Linari of 77 Paul Street, Brian McGrath of 109 Colburn Street, George Panagopoulos of 34 Winstead Street, Giorgio Petruzzullo of 42 Burgess Lane, Justin Rieter of 32 Harris Street, Courtney Retzky of 75 Brookdale Avenue and Peter Smith of 18 Westfield Street.

Mr. McGrail expressed the candidates were impressive. He added it would be a shame not to have each of the perspective candidates on the Committee. He asked if the Board has discretion to include more members to the Committee. Chairman Bethoney found the candidates to be a great cross-section of stakeholders for Dedham Square. He discussed the Board would consider these Mr. McGrail's point at the next Planning Board meeting. Mr. Bethoney thanked all the candidates for their attendance and participation.

Antonio Estates (Mariella Way)

Applicant: Supreme Development Inc.
Project Address: Antonio Estates (aka Mariella Way)
Zoning District: SRB
Representative: Peter Zahka, Esq.

John Bethoney requested the record reflect his recusal from the discussion regarding Antonio Estates due to his professional relationship with the Applicant and developer of Antonio Estates. As such, Mr. Bethoney left the room and would not be present nor participate in any votes.

Peter Zahka, Esq., was present on behalf of Supreme Development Inc, the owner and developer of Antonio Estates, also known as Mariella Way. Mr. Zahka was requesting a lot release for lot 3 of Antonio Estates. He added a final coat of pavement is still needed to complete the subdivision, but won't be done until they're 100% complete with the final house under construction. Mr. Zahka also highlighted that a condition of approval was for his client to pave from Mariella Way to Mount Vernon Street on Woodley Road. However,

he's coordinating with the Water Department. Lastly, Mr. Zahka stated they've accomplished all the conditions except for the final coat.

Motion: Ms. Porter moved to approve the covenant release as presented. The motion was seconded by Mr. O'Brien.

Vote: The vote was unanimous at 4-0.

59-57 Bridge Street

Applicant: Candy Mountain Corp.
Project Address: 49-57 Bridge Street, Dedham, MA
Zoning District: GB/GR
Representative: Peter Zahka, Esq.

Chairman Bethoney joined the Planning Board meeting for 49-57 Bridge Street. Peter Zahka discussed he was before the Board on the behalf of Candy Mountain Corporation, owner of the Mosley's parking lot at 49-57 Bridge Street. Mr. Zahka expressed he is seeking the Board to approve the temporary use of the parking lot for VA Hospital workers during their upcoming construction. Mr. Zahka stated the Board had granted a similar approval in 2012, but after recent discussions with the Building Commissioner and Town Planner, his client will seek approval for the proposed temporary use of a parking lot at the Zoning Board of Appeals. Mr. Zahka would like the Board to make a determination that site plan review is not necessary. He added in his memo he has listed five conditions related to the temporary use of the parking area for the ZBA's discretion.

Mrs. Porter asked how many parking spaces are requested. Mr. Zahka responded 150, whereas there are about 155 to 160 spaces on the property. Mrs. Porter asked the Town Planner, is the request from Mr. Zahka, which seems to be different than the agenda's request for an alternate use of Mosley's parking lot. The Town Planner stated the Board has wide discretion with regard to site plan review and Mr. Zahka is asking the Board to determine that no site plan review is necessary. Mr. Rosenberger explained the request is consistent with the agenda item. Attorney Zahka discussed he is just looking to make sure he has all bases covered with regard to the ZBA and Planning Board approvals.

Mr. McGrail stated he is fine with the request as long as the ZBA approves the conditions. Mrs. Porter was concerned that the previous 2012 Board approval was for 100 parking spaces at the site and now the VA would like 150 parking spaces. She is concerned that the site has never been adequately reviewed for site plan compliance. Mr. O'Brien state the concerns in 2012 were around general cleanliness of the parking lot. He said as long as that's being satisfied, he would be ok.

Chairman Bethoney asked if the neighbors had been notified. Mr. Zahka said his client delivered 24 notices/letters to abutters. He has not heard from any of the abutters. Furthermore, abutters will be notified through the ZBA process.

Motion: Mr. Podolski moved to determine that the proposed temporary parking use would not require site plan review by the Planning Board and would incorporate conditions 1 through 6 of the 2012 Certificate of Action by the Planning Board at 49-57 Bridge Street. The motion was seconded by Mr. O'Brien.

Vote: The vote was unanimous at 4-0. Ms. Porter asked the record to reflect that she abstained from the vote.

197 Milton Street

Applicant: Jordaan LLC
Project Address: 197 Milton Street, Dedham, MA
Zoning District: LM
Representative: Peter Zahka, Esq.
Peer Review: Steven Findlen, Senior Project Manager, McMahon Associates

Peter Zahka, Esq. was present on behalf of the Jordaan LLC, property owner of 197 Milton Street. Mr. Zahka discussed he was seeking to revoke the Certificate of Action (COA) for the subject property approved at the previous Board hearing. He stated the COA filed incorrectly had the date of approval as June 13, 2019 and he would seek the Board to reapprove the Minor Site Plan Review, with today's date.

Motion: Mr. Podolski moved to approve the request, seconded by Ms. Porter.

Vote: The vote was unanimous at 5-0.

Ames Building, 450 Washington Street Update

Applicant: Town of Dedham
Project Address: 26 Bryant Street, Dedham, MA
Zoning District: Central Business
Representative: Applicant and Representatives were not in attendance
Peer Review: Steven Findlen, Senior Project Manager, McMahon Associates

Assistant Town Administrator Nancy Baker was present on behalf of the Town of Dedham. Mrs. Baker was also joined by Chair of the Building, Planning and Construction Committee Jim Sullivan and Selectman Dennis Teehan. Mrs. Baker gave an update regarding the new Town Hall at 450 Washington Street. She stated there is ongoing discussion with the executive team and contractor team to move the project forward. They have been meeting on a weekly basis. Mr. Teehan stated the Town is currently in litigation with the contractor's and they are limited in what can be discussed.

Mr. Steeves expressed his unhappiness with regard to the progress and lack of work going on. He wanted to know about the contractor's staffing levels, as it has been poor. He wanted to know if weekly staffing reports were provided to the Town. Mr. Teehan said yes. He feels the current status is unacceptable. Mr. Teehan stated he can't get into the specifics due to litigation, but the Town is trying to move the project forward. The staffing has been poor for the past 6-8 weeks.

Mr. Steeves asked why the Town can't fire the contractor. Mr. Teehan expressed the Town is doing everything to prevent having to go back to Town Meeting to ask for more funding. Firing the current contractor would cost the Town more money and add to the timeline. Dr. Teehan then described the current insurance bond status/options before the Town. Mr. Steeves highlighted newly poured concrete to the rear of the building had already cracked. Mr. Teehan stated it is obvious the project is not at 95% completion as stated by the insurance bond company. The project has unfortunately stalled.

Mr. Steeves stated the Board should not move forward with Phase Two (the Public Safety Building project) if Phase One (the Ames Building) is not complete. Mr. O'Brien asked what are the reasons by the contractor for the stalling of the project. Mr. Teehan highlighted the Town and the contractor have two different versions of why. He also stated the bonding company has not been sympathetic to the Town's requests.

Mr. Podolski asked where the town taxpayers could find out about the financials for the project. Mrs. Baker replied she could provide those details upon request. He added, if the Town needs to go back to Town Meeting, so be it, let's get the project completed.

Mrs. Porter asked about the Planning Board's request for a joint meeting with the Board of Selectman and the BPC. Is the meeting tonight that meeting? Mrs. Baker replied, due to the ongoing litigation, the conversation would be limited. She discussed an executive session with the Selectman is an important next step and will dictate whether a joint meeting needs to take place.

Mrs. Porter was concerned about a potential lack of trust for the proposed Public Safety Building and how could they learn from the Ames Building situation. Mrs. Baker replied the Public Safety Building would be a Design/Build bid, but are still obligated by Chapter 30B to select the lowest responsible bidder. A carefully crafted RFP will not change what the Town is obligated to do in terms of meeting state procurement regulations. Mrs. Baker added an approval from the Planning Board is essential to moving forward with the Public Safety Building. She further stated ground-up construction is much different than a renovation project. Mrs. Baker has faith in the Town team and believes the project will be successful.

Mrs. Porter thanked Mr. Teehan for to discussing with the Board the role of the Selectman in regards to both projects. She added this was the first meeting a Selectman member had come to the Planning Board for the Public Safety Building. Mrs. Baker added the BPC is charged with oversight of the project through the Town Manager. The Selectman's role is due to litigation regarding the Ames Building project. Mrs. Porter added the Selectman brought the project to Town Meeting for funding and would hope they would continue to have a role in the project.

Mr. Bethoney asked if the Town was committed to getting the project done to the best of their abilities. Mrs. Baker replied yes. Mr. O'Brien asked if they could estimate what the percent complete is from the Town's perspective. Ron Votta stated it was about 97%. Mr. Bethoney stated the purposed of the discussion this evening is that commitments made by the Town in Phase One are part of a determination by the Board for moving forward with Phase Two.

Mr. Steeves expressed the work completed thus far has to be redone and was not done properly. Mrs. Baker replied they are revisiting the issues done incorrectly as the contractor's expense. Mr. McGrail asked if the Town could maintain the landscaping as it is overgrown and unsightly. Mr. Votta stated the landscaping will be fixed. Mr. Sullivan expressed the Town can't physically maintain the landscaping as the site is not under the Town's control. However, they would work to remedy the situation.

Mr. Bethoney thanked the attendees for coming before the Board.

41 River Street (Continued from 5/23/19)

Applicant: Sullivans Pharmacy
Project Address: 41 River Street, Dedham, MA
Zoning District: LMA
Representative: Robert Reissfelder
Peer Review: Steven Findlen, Senior Project Manager, McMahan Associates

This was a continuation from May 23, 2019. Present at the meeting was Jim Sullivan, co-owner of Sullivan's Pharmacy and contractor Robert Reissfelder. The Town Planner described the Applicant had outstanding issues to resolve based on the Peer Review conducted by Steve Findlen of McMahan Associates. The issues were pavement markings, labeling of easement locations, and dumpster operation. He added an updated plan

reflecting those updates is before the Board for consideration. Mr. Findlen stated he had no further comments on the updated plans and that all outstanding issues had been resolved.

Mr. Bethoney asked what waivers are being requested. Mr. Findlen responded the Applicant is seeking waivers from the landscape requirements. Mr. Podolski asked if there were going to be any sales of merchandise for the warehouse use. Mr. Sullivan stated there would be no retail sales. Mr. Podolski then asked if there would be any type of pharmaceutical drugs on site. Mr. Sullivan stated no. The site will be office and medical supplies. Mr. O'Brien stated the Applicant should consider signage stating no drugs stored on site or something similar.

Mrs. Porter asked about the chain link fence, if were to stay or was being removed. Mr. Sullivan expressed the site will be secured by gates. Mr. Podolski asked how products arrive to the warehouse. Mr. Reissfelder replied by box trucks and on occasion, a semi-truck. Mr. Podolski stated his concern with the use of the right-of-way, as a deed for such right-of-way had yet to be presented to the Board. He was concerned the abutter could ask for the Applicant to not use the right-of-way and then what would the Applicant do? Maintaining the right-of-way as an access point will need to be part of any condition of approval.

Mr. Bethoney asked what the proposed amount of interior landscaping being provided was. MR. Reissfeld stated the site is extremely constrained at that they were able to provide a small amount of landscaping at the front of the building that would amount to roughly 1-2% of the site.

After discussion regarding the provided landscaping a motion was made by Mr. Podolski to approve the requested waiver for frontage landscaping limited to only what is depicted on the submitted plans. The motion was seconded by Mr. O'Brien and approved 5-0.

Motion: Ms. Porter moved to approve the proposed project subject to the right-of-way depicted by the Applicant. The motion was seconded by Mr. Podolski with an additional condition that no retail sales or prescription pharmaceutical drugs be stored or sold on site.

Vote: The vote was unanimous at 5-0.

337-339 Washington Street (Continuance from 5/23/19)

Applicant: Garnett Realty Trust
Project Address: 337-339 Washington Street, Dedham, MA
Zoning District: CB
Representative: Stephen Rahavy, Esq.
Peer Review: Steven Findlen, Senior Project Manager, McMahon Associates

Chairman Bethoney reviewed 337-339 Washington Street was a public hearing continued previously from May 23, 2019 on a Special Permit request for a Mixed Use Development. Robert Naser, Trustee of Garnett Realty Trust and his Attorney, Stephen Rahavy were in attendance. This was a continuation from May 23, 2019. Attorney Rahavy stated his client has been asked to withdraw without prejudice the proposed project by the Planning Director due to the ongoing Mixed Use Moratorium and Mixed Use Development study as part of the moratorium. Mr. Rahavy stated his client respectively declines. He also discussed there are outstanding issues with regards to peer review and they would like to continue to resolve those issues. Attorney Rahavy discussed he feels his client is entitled to the public hearing process. He requests to continue the public hearing to November or December, as the Mixed Use Study is proposed to be completed by then. The moratorium did not include a stay for pending applications in the public hearing process.

Chairman Bethoney asked how the Board felt about a continuation of the public hearing or closing the public hearing. Mr. McGrail discussed if the applicant Withdraws without Prejudice, they could reapply upon termination of the moratorium. He was concerned by continuing, the Board may be open to constructive approval. Mr. Rahavy said the Applicant will waive any constructive approval. Mr. Bethoney added he had discussed with Mr. Naser that if the application was withdrawn without prejudice, the Board would allow him to reapply after the conclusion of the moratorium and would waive any fees and continue discussion based on where they effectively left off. Mr. Rahavy again reiterated his belief they are entitled to a public hearing process. Mr. McGrail stated he felt it was a good project, but they should respect the moratorium, and they could pick-up right where they left off. By not mutually withdrawing, they are putting the Board in a legal corner.

After discussion by the Board about extending the public hearing, Mr. Rahavy stated they would like to continue to a date certain in a couple months to address the outstanding peer review issues.

Mrs. Porter appreciated the good faith effort by the Applicant through this process and unfortunately got stuck in the middle. She stated the study good very well make significant changes to mixed use developments and the Applicant would have to adhere to those changes anyways. It would seem to be wasting time and effort to continue work on the project while a study is developed. Mr. Rahavy replied his client is willing to risk those costs.

Chairman Bethoney discussed he asked the Planning Director to get a legal opinion regarding the status of the project and continuations of the public hearing. Mr. Rosenberger stated that legal counsel's opinion is that Mixed Use Development is prohibited during the moratorium period. In addition, continuing the public hearing on a use that is not allowed based on the moratorium without significant justification is not recommended by counsel. He added extending to November or December would not be in harmony with MGL 40A with regard to continuing public hearings. In short, the case for continuation rests with the need to allow for presentation or review of evidence and testimony needed to reach a decision. Lastly, KP Law, the Town's legal counsel, recommends providing the opportunity for the Applicant to Withdraw without Prejudice.

Attorney Rahavy responded he agrees that this is a unique situation. However, he contends it was not a situation caused by his Applicant. It was created by the Board. Mr. Rahavy stated it is a moratorium on issuance of Special Permits, not that it's a use not allowed. Mr. Rahavy discussed whether they withdrew or continued, the result is the same and his client is willing to adapt the project to whatever the outcomes of the study are.

Mr. Bethoney expressed both Mr. McGrail and Mrs. Porter have expressed support for the project. He agrees that he doesn't like how the Applicant has been caught up in the moratorium. Mr. Bethoney reiterated his belief that a withdrawal is the best course of action and that all Board members are sympathetic to the case discussed this evening and would be part of the discussion in November or December.

Mr. Podolski highlighted any changes at a November town meeting would in fact need to wait until the following February or so for the Attorney General's review. He added he agrees with Mr. Rahavy's opinion of the situation and not legal counsel's. I don't agree that the use is prohibited.

Mr. Naser discussed a continuation to a date in September would allow for his team to review and respond to the outstanding peer review issues. Mr. McGrail stated he may, in light of their discussion, agree with Mr. Podolski's disagreement with Town counsel's opinion. He felt the Board should take into consideration the discussion and revisit the situation with Town counsel. He would recommend to continue to the next meeting of the Board.

Motion: After discussion amongst Board members, Mr. Podolski moved to the continue the public hearing to July 25, 2019 at 7pm, seconded by Ms. Porter.

Vote: The vote was unanimous at 5-0.

**Public Safety Building (Continued from 6/23/19)
Major Nonresidential Project/Site Plan Review**

Applicant: Town of Dedham
Project Address: 26 Bryant Street, Dedham, MA
Zoning District: Central Business
Representative: Applicant and Representatives were not in attendance
Peer Review: Steven Findlen, Senior Project Manager, McMahon Associates

Chairman Bethoney stated 26 Bryant Street was a public hearing continued previously from May 23, 2019 on a Special Permit request for a major nonresidential project, in this case a new Town of Dedham Public Safety Building. Chip Heitkamp of Dore & Whittier, the Town of Dedham's architect for the project, was in attendance, along with Assistant Town Administrator Nancy Baker, Chairman of the Building, Planning and Construction Committee (BPCC) Jim Sullivan, and Selectman Dimitria Sullivan. This was a continuation from May 23, 2019.

Mr. Heitkamp discussed there were two action items for the project based on the last meeting. One was to provide a summary presentation of the project and provide a draft Certificate of Action for the Board to review. Mr. Heitkamp proceeded to give an overview of the project for the Board.

After the presentation, Mr. Heitkamp discussed the next item of discussion was the Board's request to work with the Planning Director Jeremy Rosenberger on a draft Certificate of Action. Mr. Rosenberger discussed that he hadn't passed the draft onto the Board as he hadn't had a chance to review it and was not anticipating it as a discussion item this evening. Furthermore, it needs to be shared with other Town departments who have been active in the process.

Mr. Podolski asked Mr. Heitkamp if they had reviewed the Town Hall Certificate of Action (COA) prior to the start of the project. Mr. Heitkamp responded yes and we address the conditions that are part of that condition. Mr. Podolski highlighted a condition of that COA stated the Town will provide a presentation of the preliminary design (public safety building) to the Board. That was never done. The other condition not done was a parking analysis of Dedham Square. Mr. Heitkamp replied that while an analysis hadn't been completed, they had talking about the parking conditions of Dedham Square. Mr. Podolski stated he would not be in favor of not addressing that condition. Mr. Heitkamp discussed the Town had conducted a parking inventory through the Economic Development Director. Mr. Podolski replied he has not seen that study.

Mrs. Porter acknowledged the Town has done a parking study of Dedham Square and had a couple public meetings. Mr. Podolski stated the lack of discussion and outreach to the Board has been a problem since the beginning of this project, basically ignored.

Mr. O'Brien asked how the Ames project delay was going to affect the project before them. Mr. Heitkamp expressed they hope to have all permits in hand when the new Town Hall opens and the existing Town Hall is ready for demolition. Obviously the longer everything is delayed, cost escalation will be a factor. Mr. Podolski stated the Dore & Whittier team has done a great job with their plans. Mr. O'Brien added if a water feature was possible. Mr. Heitkamp replied there has not been any support for a water feature.

Mrs. Porter expressed her gratitude for all the numerous meetings and dedication to the project. She added, in her conversations with residents, folks seem to be excited about the proposed landscaping/open space proposed. Mrs. Porter did request that power be supplied/in place for any potential gatherings or uses of the public spaces. Also, posts to allow for shading/lightings to allow for flexible usage. Mr. Heitkamp responded that can be incorporated.

Motion: Mr. Podolski moved to close the public hearing, seconded by Ms. Porter.

Vote: The vote was unanimous at 5-0.

Chairman Bethoney asked the Planning Director to make sure all Town departments provide comments or review the proposed COA. When received, the Board will discuss them and a future Board meeting.

After discussion, the Board requested the draft COA be ready to be discussed at the July 25, 2019 Board meeting.

Motion: Mr. Podolski moved to adjourn, seconded by Ms. Porter.

Vote: The vote was unanimous at 5-0.