

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
Ralph Steeves, Associate



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Jeremy Rosenberger
Town Planner

PLANNING BOARD MINUTES
December 5, 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 Steeves, Associate

Staff: Jeremy Rosenberger, Planning Director
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.

97 Westfield Street
Approval Note Required Plan (ANR)

Applicant: Christopher W. Cheever, Trustee of the CWC Nominee Trust
Project Address: 97 Westfield Street, Dedham, MA
Zoning District:
Representative: David Johnson, Norwood Engineering

Chairman Bethoney stated he would take the two ANR applications first before the continued public hearing for the Animal Rescue League. As such, Mr. Bethoney read the agenda description for the ANR request by Christopher W. Cheever, Trustee of the CWC Nominee Trust. In attendance on behalf of the applicant was David Johnson of Norwood Engineering. Mr. Johnson provided an overview of the proposed ANR to combine a portion of an adjacent property with 97 Westfield Street, as that portion would contain the septic system for the newly remodeled dwelling on 97 Westfield Street. He added there would not be any change to frontage and would comply with the Zoning Bylaw.

Mr. Bethoney discussed the Planning Director's report stated the proposed ANR is eligible by the Board for endorsement.

Motion: Mr. Podolski moved to endorse the ANR plan, seconded by Ms. Porter.

Vote: The vote was unanimous at 5-0 for endorsement by the Board.

**930-948 Providence Highway
Approval Note Required Plan (ANR)**

Applicant: Dedham Sportsman Center, Inc.
Project Address: 930-948 Providence Highway, Dedham, MA
Zoning District:
Representative: Stephen Lee, Allen & Major Associates

Stephen Lee of Allen & Major Associates was in attendance on behalf of the Applicant. Also in attendance was Mark Edwards of the Dedham Sportsman Center, Inc. Mr. Lee discussed two existing nonconformities related to the site, both related to side yard setbacks. Mr. Bethoney asked how the proposed lot changes would affect the operations of the lot. Mr. Lee replied the owners, and the site would remain the same. Mr. McGrail asked if the buildings were changing. Mr. Lee stated, for now everything would remain the same. He added the proposed changes would also alleviate an encroachment by one of the buildings over a lot line. Ms. Porter asked if the parcel with the parking area to the rear would be combined or remain separate. Mr. Lee responded it would remain separate. Mr. Lee clarified that there will be five lots created as part of the ANR.

Mr. Bethoney discussed the report from the Planning Director stating the proposed ANR is eligible for endorsement by the Board.

Motion: Mr. Podolski moved to endorse the ANR plan, seconded by Mr. O'Brien.

Vote: The vote was unanimous at 5-0 for endorsement by the Board.

**55 Anna's Place
Animal Rescue League (Continued from 11/7/19)
Major Nonresidential Project**

Applicant: Animal Rescue League (ARL)
Project Address: 55 Anna's Place
Zoning District: SRB
Representative: Peter Zhaka, Esq.

On the behalf of the Applicant, Attorney Peter Zhaka introduced himself and recognized the ARL team in attendance. Mr. Zhaka discussed at the previous meeting, he asked that the subsequent meeting entail action by the Board and discussion of a Certificate of Action (COA). He mentioned a draft COA, incorporating many of the issues represented by the abutters at previous meetings, had been shared with the Planning Director. The draft before the Board reflects change requests by the Planning Director. Mr. Zhaka expressed the decision started at 20 pages and is now 30 pages. He stated he was willing to take direction from the Board as to how to review the COA.

Mr. Bethoney expressed the conditions begin on page 20 and Mr. Zhaka should provide an overview. Attorney Zhaka stated the COA represents all changes up until today, except those in red which were made today and not previously circulated. Mr. Bethoney asked if Board members had the opportunity to review everything except what was listed in red.

Attorney Zhaka described everything before page 20 of the COA is a summary of record for the project and what has been discussed/submitted. On page 20, condition 3, changes have been made to condition that the special permit would run with the use of the property and that any change in use is subject to Zoning Bylaw.

The next condition is related to the size of the proposed building. Based on comments, ARL is proposing a reduction in the gross floor area of the building by at least 10% prior to obtaining a building permit. The plans would need to be submitted to the Planning Director for approval before the permit can be obtained.

Mr. Bethoney stated if any members had any conditions they would like to be heard on, please state "pass" and he will mark to come back to. If you do not, then we consider it acceptable.

Mr. Zhaka then discussed the frontage landscaping, specifically the western portion would be composed of evergreen trees and the ability for specific abutters on Pine Street to choose the type of plantings for their properties. Ms. Porter asked the Board to come back to that condition. He then discussed some standard conditions such as modification of plans, what is considered insubstantial versus substantial changes, permits from other Boards and pre-construction. Mr. Zhaka outlined that construction would adhere to local and state regulations, in addition to submitting a construction management plan.

Condition 12, which is new, recognizes the project will take necessary steps to ensure Ms. Carter's well water is not negatively impacted. Mr. McGrail asked for her specific address to be added to the condition. Condition 14 is new and acknowledges that if the Town is interested in relocating the caretaker's house, which is to be demolished, the Town may do so prior to the issuance of a building permit. Mr. Zhaka then discussed standard language regarding dumpsters, monitoring of construction, parking area compliance, lighting would be turned off within thirty minutes of leaving, no internal illumination regarding signage, site lighting reviewed by the Planning Director to ensure no light spillage to adjacent properties, and submission of plans to the Town for record keeping purposes.

Condition 24 requires the Applicant to install an exterior sound blanket, surrounding the existing shelter building to mitigate any issues with animal noise. Condition 24 would be a submission of a traffic and parking management plan to the Planning Director prior to issuance of an occupancy permit. Conditions 26 and 27 deal with providing landscaping at 201 and 227 Pine Street to mitigate the visual impact of the proposed building on direct abutters by providing up to \$3,000. This would have to be done within 12 months of an occupancy permit. Condition 28 references the meeting space that has previously been referenced and that it will not be leased or rented out to any third party. In addition, ARL will make reasonable accommodations to allow the meeting space to be used without charge by the Town of Dedham or similar nonprofit entity. Condition 29 states the annual rabies vaccine clinic would be of no cost to Dedham residents and ARL will work with the

Town to publicize. Condition 30 would require ARL to contribute \$5,000 for 10 years to further mitigate impacts of the project on the Town of Dedham. The first payment would be due upon issuance of an occupancy permit. Condition 31 is a standard language that any fees/bills are paid. Attorney Zhaka discussed he would now be happy to discuss any of the conditions further or take any questions from the Board.

Mr. Podolski stated he would like at least 24-hour notice, not 12, if there is to be blasting. Attorney Zhaka agreed. Mr. Bethoney then asked Mr. Zhaka to provide the public an overview of the regulations regarding blasting.

After Attorney Zhaka's overview of blasting, Mr. McGrail asked if the specific address, 227 Pine Street, could be added to the condition regarding well water contamination. Ms. Porter asked if this would be the only property where contamination could occur. She added that abutters who could not attend the meeting should be afforded the same protections for their well-water. Mr. Bethoney stated he felt if any contamination of well-water resulted from the project, where the condition was listed or not, the Applicant would be liable for damages. Attorney Zhaka agreed to make it more general to include anyone with a well in the surrounding area.

Mr. McGrail asked if condition 28, regarding meeting space, could be updated to be specific about what types of meetings/events would not be allowed. Mr. Zhaka agreed.

On condition 30, Mr. Steeves asked what ARL would pay in taxes for that property if private. He felt \$5,000 a year in mitigation was too low. Attorney Zhaka responded the mitigation should not be considered payment in lieu of taxes. He explained ARL is a tax-exempt organization, and they are exempt from paying real estate taxes. Mr. Zhaka then discussed two instances in the Town, one educational and one a medical center, that provide payments to the Town and how they differed from ARL.

Mr. Bethoney stated, historically, Mr. Steeves has looked for entities to pay their fair share. Mr. Podolski agreed with Mr. Steeves and that \$5,000 for ten years was not close to the cost of ARL on the Town of Dedham. Mr. Podolski asked the payment period to be specific for each year.

Mr. Bethoney stated that concluded the comments regarding the COA conditions. He then asked Mr. Findlen, the peer reviewer, to give an update on comments regarding potential for a single access driveway instead of the two proposed. This was a discussion point at the last meeting held.

Mr. Findlen said he looked at two driveways versus the one driveway. After review, he has not changed his opinion that two driveways are better than one driveway. His reasoning was two driveways provide better alternatives to accessing the site, reduce queuing and improve fire access. Mr. Bethoney thanked Mr. Findlen for his analysis and recognized Stephanie Carter for comments and questions.

Ms. Stephanie Carter stated she appreciated what she had heard tonight. She is requesting ARL do a geology study prior to any construction to understand any potential well impacts. She wasn't aware of a geology study. She would also like to see in the conditions, if there is an impact to well-water,

that they be forced to stop until mitigated. Ms. Carter then provided the Board her additional condition considerations to be added to the COA. She described the additional items provide more detail on blasting, well water, landscaping, lighting, hours of operation, issue of construction, days of construction and demolition. Ms. Carter would like to propose that Saturdays and holidays be excluded as construction days, that only Monday through Friday be available for construction.

Mr. Bethoney asked if the Board had any questions or comments.

Mr. Zhaka asked if he could respond. He stated the proposed hours of operation exclude exterior work on Sundays and holidays. By not having any activity on Saturdays, the project will take longer. Mr. O'Brien stated that you don't see Saturday activity unless it is really necessary for the following week. It is likely due to Saturdays are paid at time and a half.

Attorney Zhaka stated any blasting is regulated by state law. Mr. McGrail stated the concern regarding blasting is a natural, obvious concern. He had dealt with a similar situation as part of Ursuline Academy and condos nearby. There is a process, and it is highly regulated. As concerned as he was with regard to blasting, it was professionally conducted, and his dwelling still stands. Mr. Bethoney added that no matter what the Board puts in their COA, local, state and federal regulations are the law and will be followed.

Attorney Zhaka stated there is a pre and a post evaluation process for whomever requests as part of blasting. He also added the Board does not have enforcement powers and does not have the right to cease and desist anyone. That is the Building Commissioner. Mr. Zhaka also discussed ARL will be subject to the Conservation Commission, in which an NOI (Notice of Intent) has been filed. The project will be subject to complying with the Town's strict stormwater management bylaw and any order of conditions that result.

Mr. Bethoney asked Ms. Carter if Attorney Zhaka's comments were sufficient. Ms. Carter responded she is concerned that her well may be affected beyond repair, and she would incur expense. Attorney Zhaka responded that under local/state laws, the Applicant would be required to make reparations.

Mr. Bethoney asked the Planning Director if the Board could incorporate a cease and desist into the COA regarding damages to well-water. He responded he was unsure and could look into it. Mr. O'Brien stated he was sensitive to the issue as he has a well, too. Though he stated the Board does not have the power to stop work.

Attorney Zhaka stated they have already included language that is providing conditions beyond what is appropriate for a COA. The Board is now going beyond the realm of what is appropriate and what is under the Board's jurisdiction. The Building Commissioner's role is oversight of construction. He also added that Ms. Carter is not going to support the project.

Mr. Bethoney asked if the applicant has gone to significant length to mitigate her concerns. Ms. Carter stated she has heard about what they are planning to do, but that much of it can't be enforced, such as opening hours, etc. I have heard that once it is approved, the Applicant can do whatever they want.

Mr. McGrail discussed if a condition is set and not met, the Board will be the first ones to call the building commissioner and request action. When people say they can do whatever they want, it is just not accurate and is insulting to our boards.

Mr. Bethoney asked Mr. Zhaka to discuss Paragraph 3 from Ms. Carter regarding landscaping. Mr. Zhaka stated ARL spent considerable time on the landscaping. As far as mitigation, the funding would help mitigate, but not block out entirely views of the ARL property. The landscape architect met with her and made determination of funds. It is mitigation.

Mr. Bethoney asked Mr. Zhaka to next respond to Paragraph 4 from Ms. Carter regarding hours of operation. Mary Nee discussed the normal hours of operation are 7:30 am to 7:30 pm. The campus is open seven days a week. The mobile units work Monday through Friday, which is the same for administrative staff. There could be emergencies that require off hour staff time.

Mr. Zhaka also added that lighting of the property and building has been well addressed in the proposed decision.

Mr. Bethoney reaffirmed that the hours of operation are 7:30 – 7:30, with emergency exceptions.

Ms. Carter stated the representation is that lights out at 8:00 pm. Is that the case? Ms. Nee replied yes.

Mr. Joe McKeown, 21 Aspen Court, asked when the donor meetings referenced would end. Mr. Bethoney replied the Board would make exceptions for these meetings, which the Applicant had stated would happen four times a year.

Mr. McGrail asked what about meetings for Dedham groups? They will not end at 7:30pm, so we might as well take it out. I would argue that Dedham nonprofits or civic groups should be provided flexibility. Ms. Porter and Mr. Podolski agreed.

Ms. Frasca asked to limit to the number of Dedham groups that can hold activities.

Ms. Porter noted they have been walking this fine line about what is best for the town, what is best for the abutters, what is best for non-profits. Civic Pride could meet a few times a year, etc. If we are going to do a limit it should be they can meet at least once a month. I propose twice a month inclusive of their meetings, so maybe twice a month.

Mr. Zhaka then reviewed item five from Ms. Carter, that the Board does not have the right to impose fines related to construction. As far as her other points related to construction issues, the Applicant is required to submit a construction management plan as outlined in the list of proposed conditions.

Mr. Bethoney asked Mr. Zhaka if the condition addressed the working days. Mr. Zhaka replied it is Monday through Saturday, with no work to be conducted on Sundays or state and federal holidays.

Ms. Carter expressed Saturdays would negatively affect the neighborhood. Mr. Steeves replied no work on Saturdays would delay the construction of the project.

Mr. Podolski referenced the Early Childhood Education Center had a construction manager that would notify the neighborhood if they would be working on a Saturday. Mr. Zhaka stated on Saturdays, we can start at 8 am and end at 5pm.

Mr. McGrail then summarized the Board's and Applicant's responses and solutions to Ms. Carter's six issues discussed thus far.

Mr. Bethoney expressed he would seek to close the public hearing soon and would entertain any last comments or questions from the public.

Ms. Frasca asked for clarification regarding landscaping on the western end of the property. Mr. Bethoney replied the plan is to require landscaping that is densely populated, specifically evergreen trees.

Motion: Mr. Bethoney asked for a motion to close the public hearing. Mr. McGrail moved and was seconded by Mr. Podolski.

Vote: The vote was unanimous at 5-0.

Mr. Podolski stated the Applicant has worked hard on the project to address the comments and concerns of the Board and neighborhood. As much as I don't support the project, they have worked very hard to work with the neighbors.

Mr. Bethoney asked Mr. Rosenberger to work with Mr. Zhaka regarding the changes and comments this evening.

Ms. Porter expressed it has been a long process, but the applicant has done a lot of work to acknowledge and assist neighbors. The project will be reduced in size by 10%.

Mr. Bethoney asked if the Board was prepared to make a decision?

Motion: Mr. McGrail moved to approve the project, with a recognition of all the efforts by the Applicant and neighborhood to work together, subject to all the conditions that were discussed to be incorporated. Ms. Porter seconded.

Mr. Bethoney stated the project had come a long way. The project is significantly better as a result of peer review. Does the applicant believe that as a result of the review in concert with the input both positive and critical, it is a better project today than what was originally proposed? Ms. Nee stated yes.

Mr. Bethoney added he appreciated the Applicant and neighborhood's polite and respectful courtesy during these proceedings.

Mr. Podolski read into the record the following statement:

Tonight, we are voting on whether a special permit for construction of a building on Pine Street should be approved. The applicant seeks to construct a large commercial building consisting of 23,000 square feet, as well as a second building consisting of 3,000 square feet. The large building is located on Pine Street, an already busy street here in the Town of Dedham. The proposed building on the site is located in a residential zoning district. However, our zoning bylaws admittedly allow this nonprofit organization to construct the proposed building on the site, so long as this board approves the project's special permit. In this case, due to the size of the building, and the location, the applicant must meet the requirements of a special permit for a major non-residential provided in our zoning bylaws. I am positive that when this Zoning Bylaw was enacted, allowing a commercial construction in a residential zone, it was never anticipated that a nonprofit organization would be constructing a 20,000 plus square foot commercial building in a residential zone. And I publicly commit tonight that I will seek to amend our bylaws to forever prevent such a large construction project in a residential neighborhood. As for the Applicant's proposed special permit submission, after multiple hearings, it's my firm opinion that the building proposed for the site is far too large for a residential district in which it will be built. The building, if allowed, will forever ruin what is now an idyllic site of trees, ledge and small residential buildings. If this building is allowed, the space of the Animal Rescue League's property on Pine Street will be impacted and changed forever. Furthermore, the residential neighborhoods located directly across the street from the site will also be negatively impacted—in my opinion, also changed forever. As a planning board, it is our obligation to determine whether the benefits of this project outweigh the negative impacts and not just to the neighborhood but to the entire town. In my opinion, the Applicant has failed to meet its burden and the size and scope of the building will change the landscape of Pine Street forever. The ensuing additional traffic generated will strain and stress the capacity of Pine Street, with no mitigating provision to achieve the level necessary to meet the major non-residential permit requirements of Zoning Bylaw Section 9.4. Specifically, Section 5, traffic impacts, environmental impacts and community fiscal impacts, stated earlier. My opinion on the traffic impacts, however, is in Section 9.4.5, Section 3, which the Applicant, in my opinion, fails to meet even a basic criterion for its projected community and fiscal impact upon the town. This section requires the Planning Board to assess both the existing and projected demand for public services, such as schools, fire, police, water and sewer and inspectional services, including revenues to the Town. The Planning Board assessment must consider fiscal and economic impacts upon the community as well as its compatibility with the town's master plan. Because of the applicant's nonprofit status, the Applicant has in fact stated it has no obligation at this time to contribute to any or all the factors discussed. Admittedly, the Applicant is now offering, in my opinion, a paltry sum of \$5,000 a year as its contribution to the town for 10 years, as well as the continuation of its animal services, most of which it already provides. The Applicant's offer is not nearly sufficient, in my opinion, as a minimum contribution when you consider the Applicant will be receiving police protection, fire protection, ambulance services, maintenance and repair of public ways including snowplow access, and use of the town sewer system. The contribution proposed will have no significant financial impact at all, upon the multiple public building projects this town has already completed and having the pipeline. In this member's opinion, the Applicant has failed to meet its burden. And I'm ready to vote when the Chair calls for a vote.

Mr. Bethoney asked the Board if there were any further comments before he does a roll-call vote. There were none. A roll call vote was taken.

Mr. McGrail: Yes
Mr. O'Brien: Yes
Mr. Podolski: No
Ms. Porter: Yes
And the Chair (Mr. Bethoney): Yes

Mr. Bethoney affirmed a 4-1 vote to approve the project. He then asked Mr. Zhaka to revise the draft COA.

Review & Approval of Meeting Minutes

Motion: After discussion, Mr. Podolski moved to table the meeting minutes to the next meeting, seconded by Mr. O'Brien.

Vote: The vote was unanimous at 5-0.

Planning Board 2020 Schedule

Ms. Porter asked about moving the Board's meeting nights from Thursday to another night. The reason is to not overlap with the Select Board's meetings on Thursday nights. Discussion on moving meeting nights ensued. In addition, Ms. Porter discussed that to utilize the larger meeting room at the new Town Hall, they would need to pick another night other than Thursdays.

After discussion the Board stated that the second and fourth Wednesdays would work for the Board. Mr. Bethoney asked Ms. Doherty to provide an updated 2020 schedule reflecting the changes to the next Board meeting.

Town Planner Update

Mr. Rosenberger discussed he had distributed to the Board an Executive Summary for the Mixed-Use Development Study. He stated no comments were necessary yet as they should wait for the full report.

Old/New Business

Mr. Bethoney asked Mr. Rosenberger about a letter received regarding 601 High Street from John Tocci. Mr. Rosenberger replied he was unaware of anything at 601 High Street and would follow-up with Mr. Tocci.

Adjourn

Motion: After discussion, Mr. Podolski moved to adjourn, seconded by Mr. O'Brien.

Vote: The vote was unanimous at 5-0.