

WEYMOUTH PLANNING BOARD
McCulloch Building, Mary McElroy Meeting Room
182 Green Street, Weymouth, MA 02191
January 17, 2017
MINUTES

PRESENT:

Sandra Williams, Chairman
George Berg
Paul Rotondo
B.D. Nayak

NOT PRESENT:

Dave Chandler

ALSO PRESENT:

Robert Luongo, Director Planning & Development
Eric Schneider, Principal Planner

Chairman Williams called the meeting to order at 7:00PM.

MINUTES

Chairman Williams tabled minutes until the next meeting.

Public Hearing Continued from 11/1/2016, 12/6/2016, on the Definitive Subdivision application of John Mento, Mento Homes, for property located at Farren Road, Weymouth, MA, also shown on the Weymouth Town Atlas Sheet 13, Block.157, Lot 18, for a proposed subdivision shown on a plan entitled: "Lot Layout Plan Farren Road Extension, Weymouth, MA 02189" prepared by Hardy Engineering, dated December 22, 2016, Sheets C-1 – C-3. The subdivision application proposes to create 2 buildable lots for the construction of single-family homes in the R-1 district, and extend Farren Road by approximately 185 ft. with utilities.

Mr. Berg made a MOTION to OPEN the PUBLIC HEARING for FARREN ROAD. Mr. Rotondo SECONDED the MOTION. It was UNANIMOUSLY VOTED.

Chairman Williams stated she would like to read an e-mail she received from Counselor Kenneth DiFazio into the record.

To: Sandra Williams, Chairman, Planning Board
From: Ken DiFazio
Sent: Tuesday, January 17, 2017 3:54pm
Subject: Planning Board meeting tonight

Hello, sorry for the lateness of this email but it appears that the Planning Board has two matters on its agenda this evening, Commercial Street and Farren Road, which are within District 3 jurisdiction. I would normally be present at your hearing but tonight I am required to Chair an Ordinance Committee meeting as well as report out to the full Town Council at the Town Council meeting as well. Therein lays the dilemma. Although I would have preferred both of the matters before your board tonight to be rescheduled I realize the unrealistic aspect of such a request and therefore I send you this email to insure that you are aware that if there are any issues before the board tonight that may warrant a continuance

of the hearing that the board air on the side of caution and continue the hearing so that the issues are properly vetted and so that I may be present at the continued hearing.

Again, I don't seek to hinder the process, rather if the possibility of continuance should arise I as the District Councilor for both projects would respectfully request and concur with the board to do so.

Thank you for your assistance in this matter and if there are any questions leading up to tonight's matters please feel free to contact me.

Ken DiFazio

Attorney Greg Galvin
John Mento, Applicant
Shawn Hardy, Engineer

Attorney Galvin stated the applicant has meet with DPW a number of times and the current plan satisfies all of DPW's concerns. The applicant is still asking for four waivers as follows:

1. Section 5.5.2 – Dead-end streets, shall be provided a turn-around having a minimum outside roadway diameter of at least 90'
2. Section 5.5.4 – Dead-end streets, shall be provided with a circular landscaped island with a minimum radius of 30'
3. Section 6.9.1 – Sidewalks shall be constructed within the subdivision, etc.
4. Section 6.3.1 – Roadway pavement shall be paved at a minimum of 28'

Attorney Galvin stated the proposed hammerhead turnaround will make this dead-end street less dangerous. The Weymouth Fire Department has approved the proposed extension of Farren Road and the hammerhead turnaround; there are currently no sidewalks on Farren Road. The applicant proposes two house lots; each lot is more than 25,000 feet and each lot meet 75% uplands from Conservation Commission.

Attorney Galvin reminded Planning Board of what its role is here tonight; just to approve the rules and regulations. This plan meets with the guidelines with a few minor requested waivers

Questions from Planning Board:

Mr. Nayak asked where are the fire hydrants located. Mr. Hardy stated one at existing road and another one at proposed extension.

Mr. Berg stated the wetlands are not flagged on these reports.

Mr. Rotondo asked has Mr. Mento purchased the parcel yet. Attorney Galvin stated no, not until after the subdivision is approved.

Chairman Williams asked to have drainage easements explained. Mr. Hardy explained Mr. Ken Thompson walked the site and tested the soil, rust line at high level of soil. High ground water level; needs to be a minimum of two feet above sea level. DPW suggested mitigate imperious area; two catch basins, over flows. The Homeowners Association will be responsible for the catch basins; it will be part of the deed. Should there become an issue with the catch basins these two homeowners will have to deal with the catch basins; it will be written into their deeds that they are responsible for the catch basins. Currently no drainage at all at Farren Road.

Chairman Williams stated the Town of Weymouth is currently trying to make a lot of private roads in the town public. What would Farren Road have to do to become public? Mr. Luongo stated number one Farren Road is not a public road. DPW has a list of what needs to be done to bring up to standards to be accepted to a public road. Right now the only area that is being proposed to be improved is at the very end, the extension. If there are minor deficiencies in roads the town may accept these roads; if there are major deficiencies in roads the towns may fix these roads to bring them up to standards to get them on the tax roll. It is unclear as to where Farren Road sits on this list at this time.

Public Comment

Andrea Pudrea
47 Tick Tock Lane

Ms. Pudrea wished to thank Mr. Schneider for his work on a lot of her questions. Ms. Pudrea stated she has water damage now from two weeks ago; who does she contact about that? Attorney Galvin stated there is a stream behind Ms. Pudrea's home that puddles there; currently there are no catch basins in this area. What the applicant proposes will improve the drainage in this area. Mr. Luongo stated the developer is first. The developer extends the roadway, puts the pipeline down, then utilities, catch basins, builds the property, then the house gets an occupancy permit. Houses don't get sold until easements are clean.

Kate Doyle
94 Farren Road

Ms. Doyle stated she urges Planning Board to deny the hammerhead turnaround and not waive the cul-de-sac rule.

Mista Gabando
23 Farren Road

Ms. Gabando asked how big houses will be. How close to her houses will the new houses be? What are the building hours? How many trees will be cut down?

Elizabeth Egan Mullin
30 Farren Road

Ms. Mullin asked why the developer can't fix the entire road if they are coming in and changing the road.

Wayne Mathews
952 Commercial Street

Mr. Mathews stated that in the rules and regulations it makes specific mention to adequate access to a property. Case law has shown that adequate access means that you need to consider the outside roadways to this property. By the town's standards you have a road that is sub-standard and you are proposing a hammerhead turnaround instead of a cul-de-sac.

Mr. Nayak stated if Weymouth Fire Department says this road is approved, then it is ok.

Chairman Williams stated Planning Board does look at this, if it was a major problem a department in town would have spoken up. Every department signed off of this application. It would be inadequate access for the current residents that live there too. All town departments have approved the road and the proposed road.

Chairman Williams asked Attorney Galvin if he could explain why a hammerhead turnaround and not a cul-de-sac design. Attorney Galvin stated it was the total amount of land that was available when you deduct what was needed for the cul-de-sac taking 25% from each lot, they didn't have enough frontage left. That's when they changed the design to a hammerhead turnaround; two no parking signs will be placed in the turnaround so that people will not park there.

Kate Doyle
34 Farren Road

Ms. Doyle stated shoe-horning two homes in the end of the road will not improve the road; putting in the hammerhead turnaround will not improve the road. Ms. Doyle asked Planning Board to bond this project for damage by Mr. Mento from Farren Road to Church Street and to also deny the waivers.

Ken Pudrea
47 Tick Tock Lane

Mr. Pudrea asked will there be any blasting; because his house is still shifting.

Matt Tallon
105 Tretton Avenue

Mr. Tallon stated he lives on a private, unaccepted roadway not far from Farren Road. Mr. Tallon stated he requests that if Planning Board goes forward with this project it asks Mr. Mento to volunteer to resurface the road out to Church Street as a kind thing to do for these residents.

Mr. Berg made a MOTION to CLOSE the PUBLIC HEARING for FARREN ROAD. Mr. Rotondo SECONDED the MOTION. It was UNANIMOUSLY VOTED.

Farren Road Extension, Definitive Subdivision Request for Waiver

Mr. Berg made a MOTION to APPROVE the waiver #1 Section 5.5.2 – Dead-end streets, shall be provided a turn-around having a minimum outside roadway diameter of at least 90'. Mr. Rotondo SECONDED the MOTION. Motion passed; 3-1 vote. Yes – Williams, Berg, Rotondo; No- Nayak.

Mr. Berg made a MOTION to APPROVE the waiver #2 Section 5.5.4 – Dead-end streets, shall be provided with a circular landscaped island with a minimum radius of 30'. Mr. Nayak SECONDED the MOTION. It was UNANIMOUSLY VOTED.

Mr. Berg made a MOTION to APPROVE the waiver #3 Section 6.9.1 – Sidewalks shall be constructed within the subdivision, etc. Mr. Rotondo SECONDED the MOTION. It was UNANIMOUSLY VOTED.

Mr. Nayak made a MOTION to APPROVE the waiver #4 Section 6.3.1 – Roadway pavement shall be paved at a minimum of 28'. Mr. Berg SECONDED the MOTION. It was UNANIMOUSLY VOTED.

Mr. Berg made a MOTION to APPROVE the Definitive Subdivision application of John Mento, Mento Homes, for property located at Farren Road, Weymouth, MA, also shown on the Weymouth Town Atlas Sheet 13, Block 157, Lot 18, for a proposed subdivision shown on a plan entitled: "Lot Layout Plan Farren Road Extension, Weymouth, MA 02189" prepared by Hardy Engineering, dated September 5, 2016 and revised December 22, 2016, Sheets C-1 – C-3. The subdivision application proposes to create 2 buildable lots for the construction of single-family homes in the R-1 district, and extend Farren Road by approximately 185 ft. with utilities with the four previously voted waivers. Mr. Rotondo SECONDED the MOTION. It was UNANIMOUSLY VOTED.

PUBLIC HEARING 958 COMMERCIAL STREET

Mr. Luongo stated there are only 3 sitting members on this matter; Mr. Rotondo recused himself.

Under Section 4.9 of the Rules and Regulations of Planning Board, a Public Hearing will be held for the consideration of a resubmittal of the Definitive Subdivision application of John Deady for property located at 958 Commercial Street, Weymouth, MA, also shown on the Weymouth Town Atlas Sheet 18, Block 189, Lots 8 and 17, for a proposed subdivision shown on a plan entitled: "Definitive Subdivision of Crowley Estates on Spencer Court, Weymouth, MA" prepared by J2M Consulting Associates, LLC, and stamped by PE Jeffrey R. Romani on December 12, 2016. The subdivision application proposes to create 3 buildable lots for the construction of single-family homes in the R-1 district, and construct a ~300 ft. long road with utilities, fire hydrant and turnaround at the end.

Mr. Nayak made a MOTION to OPEN the PUBLIC HEARING for 958 COMMERCIAL STREET. Mr. Berg SECONDED the MOTION. It was UNANIMOUSLY VOTED.

Mr. Deady stated the name has been officially changed from Crowley Estates on Spencer Court to Cicchese Circle; going forward, all paperwork should all read Definitive Subdivision of Crowley Estates on Cicchese Circle.

Mr. Deady addressed the 15 items of concern with the DPW and Town Engineer. The items and responses are as follows:

1. Sheet 2- As previously noted, this is registered land and the subdivision needs to be prepared in accordance with MA Land Court Instructions. The land surveyor's certification is incorrect. The surveyor has certified to the registry of deeds not the land court. Land court will not accept this plan without the property certification thus causing the planning board to sign it again at a later date. **Language required for the Land Court has been added.**

2. Sheet 2- The plan is missing various bearings and distances. The roadway distance adjacent to Commercial Street is incorrect. The plan shows a 38.68' length of curve along Commercial Street, it should be 58.71' according to land Court Plans. **Bearings have been added, the distance along Commercial Street has been corrected.**
3. Sheet 2- Connection distances from the new right of way (ROW) lines to the existing property lines were not provided along Commercial Street. **Connection distances have been added on drawing 2.**
4. Sheet 2- Label references an iron pipe at the northwest corner of McMillian property. The pipe is not shown. **The iron pipe has been shown on drawing 2.**
5. Sheet 2- Meridian arrow does not reference its origin. Previously noted (250 CMR, Section 6.01). **Meridian Arrow Reference has been added on sheet 2.**
6. Sheet 2- The portion of the proposed ROW at Commercial Street intersection is not labeled correctly. The Commercial Street ROW at the intersection is a curve with a radius of 760 feet. Insufficient data is provided to mathematically close the proposed ROW. The ROW distances do not tie back to the existing property lines so exact placement of the new ROS is not possible. **The radius has been corrected and shown to be the 760 feet and date provided to tie back to existing.**
7. Sheet 2- The 11.52' and 8.18' radii shown at the entrances to the proposed cul-de-sac are believed to be non-tangent. If this is the case, they need to be labelled as such and contain a chord bearing the distance for layout purposes. It is recommended that tangent curves be designed for these two curves at the cul-de-sac. Chord bearings are also required on the two entrance curves for the non-tangent curves entering from Commercial Street and labeled non-tangent. **All radiuses have been labeled non tangent when appropriate, chord bearings and distances have been shown.**
8. Sheet2A- The sidewalk is shown encroaching onto private property at Lot 4. This would require an easement if constructed as shown. **Sidewalk no longer encroaches on Lot 4.**
9. Sheet 3 This is a subdivision of two existing lots and should be reflected as such. **Two lots have always been shown on sheet 2, it is not required on sheet 3, and however we added the reference.**
10. Sheet 5- Some of the proposed grading is incorrect or incomplete behind Prop. #2 & #3. **Grading has been checked and corrected.**
11. Sheet 5- Proposed grading directs water to the northeast corner of Prop. #1. There is an incorrect spot elevation of 85 at the southeast corner of Prop. #1. The contour labelled 85.000 at the rear of Prop. #1 appears to be incorrect. Grading at the rip-rap outfall is incomplete. This should be corrected prior to submitting. **The outfall has been checked and corrected.**
12. Sheet 5- Proposed contours need to be labelled. **Contours have been labeled.**
13. Sheet 5- Duplicate perimeter lines make it difficult to determine which line is the property line. **Property lines are clearly indicated on sheet 2.**
14. Sheet 7- 50' stated existing and proposed elevation grades are not shown on the profile, Subdivision Regulation (SR 4.2.14). These are required for proper staking of the roadway (SR 6.1.7). Centerline vertical curve data should be reviewed by the traffic Engineer to confirm compliance with subdivision regulations. **50' elevations have been shown and meet the subdivision regulations.**
15. Total area of the roadway is not shown on the plan (SR 4.2.20). **Total area of roadway and paved area is shown on sheet 2A.**

Mr. Deady stated he has put back in the landscaped island and the 40' radius and respectfully requests that Planning Board approve his application for subdivision.

Mr. Nayak advised Mr. Deady a letter has come to Planning Department from Weymouth Fire Department stating if a waive is granted there could be potential for a disastrous outcome. Mr. Nayak read the letter from the Weymouth Fire Department into the record:

January 17, 2017

*Eric Schneider
Principal Planner
Department of Planning and Community Development
75 Middle Street
Weymouth, MA 02189*

**RE: 958 Commercial Street
Site Plan Review**

Mr. Schneider,

The Weymouth Fire Department has reviewed the proposed definitive subdivision plans for "Crowley Estates on Spencer Court". The following observations were made;

- 1. Fire Department Access: Where Spencer Court intersects Commercial Street, the minimum inside turning radius should be a minimum of 25' to accommodate Fire Department Apparatus.*
- 2. Fire Department Turnaround: Turnarounds shall have a minimum 96 foot diameter cul-de-sac. In accordance with the International Fire Code (IFC).*

I respectfully request that if relief is granted that may inhibit the travel of fire apparatus that the applicant would be required to install a residential NFPA 13D sprinkler system to offer some protection to the future residents.

Sincerely,

*Captain Justin Myers
Fire Prevention Coordinator*

Mr. Nayak suggested Mr. Deady install sprinkler systems in each of the three homes being built. Mr. Deady agreed and stated he will install sprinkler systems into all three of these homes.

PUBLIC COMMENT

**Wayne Mathews
952 Commercial Street**

Mr. Mathews handed Chairman Williams copies of Rules and Regulations and Case Laws.

Mr. Mathews stated good evening, my name is Wayne Mathews and I am a direct abutter and live at 952 Commercial Street. Before I begin addressing why this project should be denies I would like to discuss why reconsideration of this application is wholly inappropriate. For the past week I've been

communicating by email with several members of the town's administration and the town solicitor. I have presented them with multiple reasons as to why reconsideration is inappropriate and why the applicant needs to file this as a new plan.

First, the official denial letter stated the subdivision was denied because the "Motion to approve" was NOT voted affirmatively by a majority of the Board; only a majority of the board members present. (Exhibit 1). It did not state it was denied due to the waivers being denied. The letter did state the waivers were denied but that is not correct. Waivers do not need a majority of the board to pass. Case law such as McELDERRY JR v. PLANNING BOARD OF NANTUCKET says a majority of the board is needed to approve a subdivision. It makes not mention a majority of the board is needed to approve a waiver. Later in Duddy v. Mankewich, the court reaffirmed that a majority of the board is needed to vote affirmatively for a subdivision to be approved and it made no mention a majority was needed for waivers. In fact I see no case law regarding waivers.

Now, Mass Law Section 81R regarding waivers makes no mention of waivers requiring a majority of the board to approve.

Section 81R (WAIVERS). A planning board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law, waive strict compliance with its rules and regulations, and with the frontage or access requirements specified in said law, and may, where the ways are not otherwise deemed adequate, approve a plan on conditions limiting the lots upon which buildings may be erected and the number of buildings that may be erected on particular lots and the length of time for which particular buildings may be maintained without further consent by the planning board to the access provided. The planning board shall endorse such conditions on the plan to which they relate, or set them forth in a separate instrument attached thereto to which reference is made on such plan and which shall for the purpose of the subdivision control law be deemed to be part of the plan.

It simply says the board "shall endorse."

Weymouth's own rule (Subdivision Regulations Section 7.1) says waivers can be granted "in the judgement of the board," not majority of board members present. It shows waivers can be passed with a simple quorum majority.

Now I understand that because the waiver passed, the Board had no justifiable reason to deny the subdivision. Sadly, the 20-day appeal period is over so the applicant must submit a new plan.

The second reason why the applicant should have to resubmit a new plan is because the public notice is not correct. It violates Massachusetts Subdivision Control Law section 81T and Weymouth's Subdivision Rule section 4.6. The rule states "notice of the time and place of which and of the subject matter, sufficient for identification, shall be given by the planning board at the expense of the applicant" in newspapers and to the abutters two weeks in advance. The new public notice I received states the applicant is creating 3 buildable lots. This is not true; the applicant is merging 2 existing lots and creating 4 buildable lots. The lot at 958 is undergoing a major redesign to meet the 25,000-square foot requirement. The denial letter from November 8, 2016 says 4 new lots. The information IS inaccurate. Per Patelle v. Planning Board of Woburn, a public hearing notice must identify the purpose of hearing and describe land sufficiently for purposes of identification from the common person. The public hearing notice was incorrect when it stated 3 lots were being created. Four lots are being created. I'm

not sure what the rules are regarding misrepresenting public hearing notice but the court says you must accurately describe what is happening so all interested parties are able to understand what is at issue and make a determination whether to attend and participate in the hearing. Maybe some people didn't come tonight because they thought three lots was OK but four are actually being created.

The third reason the applicant should resubmit this as a new plan is because the applicant's plan is basically a new plan (ex 2 and 3). The lot size, frontage and dimensions have been changed significantly. Proposed lot #4 has undergone significant changes including dimensional changes and the moving of the house and garage. In fact a new concrete foundation will be poured. Also, the actual positioning of the new planned public road has been changed. The only thing that hasn't changed is the fact that the applicant wants to create 4 lots (or 3 per the public notice). These are MAJOR changes and, under Mass subdivision law section 81O, require the submission of a new plan. Additionally, while listening to a copy of the October meeting Mr. Luongo specifically states that if the applicant turns the house a new plan must be submitted because this is considered a MAJOR change. This occurs at 1:15:40 of the October meeting. Mr. Luongo says it himself.

Those are three reasons as to why the applicant must submit a new plan and I would hope you seek legal counsel and dismiss this forthwith. If you fail to heed my advice and wish to continue I will be presenting you with reasons why this must be denied. I've provided you with copies of the Weymouth's Subdivision Rules and Regulations as well as a packet of evidence that needs to be submitted into record. By law, and reaffirmed by many court cases, the rules and regulations are a comprehensive statutory scheme which MUST be followed.

Let me begin with zoning though. If the applicant turns the house on the existing lot at 958 it triggers Weymouth's zoning law 120.60 which says that "in areas where there is rear land for development that may require access through the lots involved, then the lot width shall be 200 feet." The lot width will be less than 100 feet even when including the road. The applicant MUST go in front of the Zoning Board of Appeals for this project to move forward. Per legal decision Beale vs Planning Board of Rockland – A planning board can disapprove a definitive plan if it does not comply with the town's zoning requirements. Legally you MUST deny this plan because it does not meet the zoning requirements.

The second reason why the application should be denied is because the application and accompanying materials are incomplete. This is noted in a memo dated January 9, 2017 from Jim McGrath, the town's assistant engineer to Bob Luongo. Mr. McGrath said the plan:

- Is missing various bearing and distances
- Is missing labels
- Is missing the total area of the roadway is missing
- Roadway distance adjacent to Commercial is incorrect
- The meridian arrow shows no point of origin
- Contours need to be labeled
- Proposed grading is incorrect or incomplete or labeled incorrectly

Grading figures MUST be shown on plans to ensure compliance with Massachusetts Stormwater Management Standards as well as the town's own rules. Missing figures on the map is a direct violation of the Town's own subdivision Rules and Regulations under section 4.2 and this plan must be denied. Under *Canter v Planning Board of Westborough* a Planning Board can deny any application for its failure

to follow is rules and regulations. The town has rules regarding proper filing under section 4.2 and this plan violates them.

Speaking of grading issues item #11 memo from Jim McGrath to Mr. Luongo says that “proposed grading directs water to the Northeast corner of Prop. 1. That would direct water directly on to Mr. McGrath’s property. Under section 4.2.16 of Weymouth’s Subdivision Rules, “If storm water will discharge onto adjacent properties not owned by the applicant” the applicant must show that the discharge is satisfactory with the adjacent property owner. I don’t want to speak for Mr. McGrath but I don’t think that he’ll be OK with discharging storm water onto his property. Also, section 5.10 says “lots shall be prepared and graded in such a manner that development of one lot shall not cause detrimental drainage on another. Under public works rules this is a major project and all maps need to show location and design of erosion and sediment control measures proposed to prevent offsite sediment transport. Town zoning law 120.92 about slope stabilization also applies here.

Without having the proper grading features on the map the town’s engineering department is not able to determine the project meets all of the town’s regulations. Nor can I. I can only assume that Jim McGrath’s memo to Mr. Luongo dated September 15, 2016 is still valid. In that memo grading issues were a huge topic. Items 12, 13 and 14 dealt directly with it.

- Item #12 said that 2:1 slope next to property 2 is not practical and access to the side by emergency responders would be difficult.
- Item #13 said the yards would be extremely difficult to mow with the proposed grading and the grading would be a constant erosion situation that could adversely affect downhill property. I’m pretty sure that is illegal according to Massachusetts storm water standards.
- Item #14 mentions there is a 10-foot-high retaining wall adjacent to proposed house #3. How is a 10-foot-high retaining wall NOT a significant safety issue? What if some kid fell off that wall?

How did some members even vote to approve this previously? It violates law.

Additionally, the applicant’s trip generation and stopping sight distance report from Gillon Associates which is conveniently paid for by the applicant is unbelievably inaccurate. First, it makes its determinations on 3 homes by this project contains 4 homes and all vehicles will be entering and exiting using the proposed street. The report mentions traffic volumes generated by this project are low and says the number of peak trips in the morning will be 2 and 3 in the evening. It also says that weekday trips will be 29. These figures do NOT correspond with what Weymouth’s own rules on how many trips will be generated. In the Volume of Traffic section in the Town’s own subdivision rules, it says the Planning Board shall calculate 10 trips per day for each single-family unit. Did the rep from Gillon Associates read Weymouth’s regulations? A trip is defined as “an act of going to a place and returning; a journey or excursion” so that means this 4-property development would have cars entering and exiting the street 80 times per day. This proves the applicant’s traffic report is inaccurate and should not be used in determining safety issues. 80 cars entering and exiting per day adds significant traffic to an already extremely busy street in Weymouth. My homeowner’s appraisal completed in July 2015, noted as an adverse condition that traffic on Commercial Street was “higher than typical residential traffic. (Ex. 7) In fact, during peak traffic times I find myself waiting long periods of time to pull out of my driveway.

Gillon Associates figures for safe stopping distance does not consider people turning left off Unicorn Avenue onto Commercial Street and moving towards the development. Vision can be obscured by the hill. How can you have a safe stopping distance of 357 feet when a hill obscures your vision less than 150 feet away? You simply cannot see a vehicle turning left off the propose street onto Commercial Street. I have pictures that show this is a blind spot.

Heaving traffic coming off Unicorn Avenue is one of the reasons why Section 5.2.5 of Weymouth's subdivision rules exists. Section 5.2.5 says "Streets shall be laid out so as to intersect at intervals in a range of 600 feet to 1200 hundred feet." Now some town officials have said that section 5.2.5 does not apply to this project but it only applies within subdivisions. This is inaccurate and it's spelled out in the town's own rules. Under Section 1.1 of the Town's rules it says these rules were created to:

- Ensure adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel
- To lessen congestion to such ways and in adjacent public ways (Commercial Street)
- Reducing danger of life and limb in operation of a motor vehicle
- Coordinating the ways in a subdivision with each other and with the public ways in Weymouth and with the ways in neighboring subdivisions

Further evidence that it applies can be found in Section 5.1 titled Streets. It says "the proposed streets shall conform in location to the existing street system." The most damning evidence here is that there is an established pattern of the Planning Board addressing section 5.2.5 in a previous case that mirrors this one. In fact, the applicant referenced he previous case when asking for a waiver on turning radius. The Weymouth Planning Board's minutes from July 10, 2012 show a waiver for section 5.2.5 was sought for the project at 119 Randolph Street which turned into Dandelion Lane. Dandelion Lane was less than 600feet away from Oakdale. This Board and specifically Chairwoman Williams were part of that discussion. The minutes show then-Chairman Flynn was against granting the waiver BUT the waiver was granted anyways. This Board voted on that waiver and this Board MUST show consistency with its own rules and regulations. Failure to make the applicant seek a waiver will make easy grounds for appeal. This Board can NOT choose which rules and regulations it wants to follow especially when a precedent has been set. This is discussed in Curtin v Board of Survey and Planning of Waltham. It was also discussed in Kraftchuck vs Planning of Ipswich. BOTH court decisions said a planning board must follow its own rules and regulations.

Another rule that MUST be obeyed is 5.6.3. That rules says that "Driveway cuts shall not be within 65 feet of an intersection of the center line of intersecting streets." I do not see how a new road can be built when the road will be feet from Mr. MacMillan's driveway and less than 65 feet from my own. The applicant MUST ask for a waiver and this waiver should be denied due to the dangerous and congested traffic conditions which exist on Commercial Street. Adding this road will add too many conflict points.

Once again, there is precedent in the town for 5.6.3. The minutes from this Planning Board's January 19, 2016 meeting showed YOU granted a waiver on 5.6.3 for the subdivision at 1119 Front Street. That project also ended in a dead-end street. Jim McGrath, the town's assistant engineer noted section 5.6.3 in the memo from September 15, 2016 as item #5. The previous mentioned cases of Curtin vs Waltham and Krafchuck vs Ipswich apply here also. You simply cannot choose when and who these

rules and regulations apply. You must follow them. In *North Landers Corp v Planning Board of Falmouth* it says a "planning board's rules and regulations must be comprehensive and reasonably definite." You are bound by law to make applicant apply for them.

Additionally, the applicant should have expected these rules and regulations to be applied when he submitted his application. In *North Landers Corp v Planning Board of Falmouth* the court rules that "planning board's rules and regulations must be carefully drafted so that applicants know in advance what they must comply with in order to obtain a subdivision approval from the planning board." Similar projects such as Dandelion Lane asked for waivers for the same type of plan in front of us tonight. He referenced Dandelion. There are rules are not confusing. Seriously, I am not an engineer or a developer and I completely understood they apply.

These waivers MUST be denies due to the heavy traffic conditions on Commercial Street. Commercial Street has significantly higher traffic than Randolph and Front Street projects. In *North Landers Corp v Planning Board of Falmouth* the court rules that "in determining adequate access, a planning board may consider factors pertaining to safety accessibility or increased traffic on a public way adjacent to a proposed subdivision as a purpose of the subdivision control law is to lessen congestion in adjacent public ways. "Also in *Rattner v Planning Bel of Tisbury* the court ruled the planning board should consider the impact of the subdivision on roads outside the subdivision with respect to safety accessibility and traffic based on its regulations and the purposed of the subdivision control law." This is why I provided you with a copy of the Town's Rules and Regulations regarding subdivisions. I provided testimony earlier cars would be entering and exiting the road 80 times per day and mentioned al of the traffic conflict points in such a small area.

In *Patelle v Planning Board of Woburn* the court ruled that the subdivision control law primarily benefits inhabitants of municipality. It benefits the residents, not the developer. And in *Nahigian v Town of Lexington* the court ruled the planning board could disapprove a subdivision plan that did not comply with a clearly stated requirement in the board's regulations. These regulations are not confusing they're pretty damn straight forward and clearly stated.

Approving waivers for these items is NOT in the public's best interest. There is not benefit to any of the neighbors here. It's a safety hazard with too many roadway conflict points in a small area. You are putting my family's safety at risk. It hurts our quality of life and our privacy. It ruins the character of the neighborhood and will also harm our property values. This was noted in my home appraisal which I can provide you a copy of.

In *Anigo v Planning Board of Franklin* the court ruled that the disapproval of subdivision plan may be based on noncompliance with planning board's rules and regulations recommendations of the board. It's as simple as that. I've laid out a clear and plain picture as to why it's not compliant using facts and actual case law to back up my claims. The town's own assistant engineer's memo shows the plan does not comply "Required Plan Contents" under section 4.2 in the town's regulations.

You have a job. Your job is to protect the people from overdevelopment. The first line of the Rules and Regulations Governing the Subdivision of Land in Weymouth says it all. Under Purpose 1.1 it says "These subdivision regulations are adopted for the safety, convenience and welfare of the inhabitants of the Town of Weymouth. According to *Doliner v Planning Board of Millis* the planning board should ensure compliance of subdivision plan with its rules and regulations and with local zoning planning boards' rules and regulations" this is your job. Other court cases have shown that the subdivision

control law provides a comprehensive statutory scheme that must be viewed in its entirety. In *Nantucket Land Council v Planning Board of Nantucket* the court ruled that subdivision control law is a comprehensive statutory scheme. You cannot only apply the rules when you feel like it. They must be followed to protect the people. Use that document I just provided to you called Rules and Regulations.

Listen, I shouldn't even be here right now. This should have been denied completely back in October. I shouldn't be pointing out these issues to you. The town should have seen them yourselves. I shouldn't have had to spend my hard earned money on legal advice. I shouldn't have spent countless hours researching case law. You can fix this though. The law is quite clear; it shows that legally you must deny this plan. You don't have a choice. It's incomplete and doesn't follow the law. If you do approve it with all its holes, all of its missing requirements, all the waivers needed and all the violations I noted you will be showing gross negligence.

All case law derived from SUBDIVISION CONTROL GUIDEBOOK Published by Massachusetts Federation of Planning and Appeals Boards Inc. (2002) and An Overview of the Subdivision Control Law by Department of Housing and Community Development (2009) and confirmed by masscases.com.

Freeman v Planning Board of Boylston despite court order to review drainage on remand planning board could also review intersection in order to protect public safety before approving subdivision plan.

Strand v Planning Board of Sudbury modification of subdivision approval requires notice and public hearing even if modification is on remand from court courts consideration of plan on appeal is to determine if it conforms to planning boards' rules and regulations.

Chairman Williams asked Mr. Luongo to confirm that this Planning Board meeting is in fact legal. Mr. Luongo stated yes and Attorney Callanan is present this evening and can answer any questions that Planning Board has.

Attorney Callanan
Town Solicitor

The applicant is asking Planning Board to reconsider the rescind disapproval on a plan he submitted earlier. Based on the evidence he submitted earlier; He was seeking two variances. Now before the Planning Board is a plan asking for the Planning Board's reconsideration. The applicant has now met the Planning Board rules and regulations and is no longer asking for a variance, only waivers. So it is a perfectly legal request of the applicant, the idea that because the appeal period ran before doesn't mean he cannot ask for consideration now. You can have a denial and your appeal period run and you can ask for reconsideration. Because you lose one doesn't mean you should lose the other.

Mr. Berg asked does any of this constitute a rewrite of the application. Attorney Callanan stated two areas needed a variance, he made changes. If applicant makes third change then need new application. Mr. Luongo stated at October meeting he stated if applicant made change to existing home he was under the impression it would need to be a new subdivision and applicant would have to go before the Board of Appeals for zoning changes. Mr. Luongo stated it was somewhat of an incomplete statement that he made. It appears that he is changing the foundation. Mr. Deady stated that is correct.

Mr. Deady stated he is looking for 4 lots; trying to put whatever Weymouth would allow.

Mary Lee Herin
54 Unicorn Avenue

Ms. Herin stated it is dangerous driving in this area.

Dan Daly
28 Fisk Avenue

Mr. Daly stated he is confused, are we here for a 3 lot or a 4 lot application. It was posted as a 3 lot application. As a safety aspect, people fly down this street. Mr. Daly encourages Planning Board to take Safety aspect into consideration.

Richard Shirstead
Commercial Street

Mr. Shirstead stated he feels that traffic situation at Legion Field and Emery Estate will only get larger.

Dennis Coite
972 Commercial Street

Mr. Coite stated this hearing should not even be occurring. The Planning Board has allowed this hearing under section 4.9 of the rules and regulations. Section 4.9 is not applicable to this case.

Again section 4.9 states: "If the Board modifies or disapproves such plan, it shall state in its vote the reasons for its action and shall rescind such disapproval when the Plan has been amended to conform to the Rules and Regulations of the Board and to the recommendations of the Board of Health.

The development was disapproved because the board failed to conform to the rules and regulations. The disapproval did not occur because the plan did not comply with the rules and regulations. This makes the revocation of the disapproval based on an amended plan inapplicable.

Application Concerns

Mr. Deady's LinkedIn page shows that he is the President at J. Deady Electrical Inc. It is quite possible that Mr. Deady is an electrical contractor and I would ask him if I was allowed.

Mr. Deady are you an electrical contractor. Mr. Deady stated yes.

Let it be known that Massachusetts has state laws that are established to help protect customers from unfair practices by contractors. In Massachusetts it is a prohibited act by a contractor to make "any material misrepresentation in the procurement of a contract or making any false promise of character likely to influence, persuade or induce the procurement of a contract.

The application submitted by Mr. Deady is an attempt to procure a contract.

The application for approval of a definitive plan is not very long, it is only 2 pages. However, it does ask in two different spots whether there are any encumbrances on the land. In one instance Mr. Deady writes "N/A" for not applicable and in the other spot he clearly writes "none." An encumbrance is a

claim or liability against real estate, held by someone other than the owner of the property. A free search of public records show there is a lien on this property. This record was filed in July 2016 and states "Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer..."

The false claim is considered a material misrepresentation.

If Mr. Deady is an electrical contractor, the submission of this application has broken Massachusetts state law. Regardless, this is grounds for disapproval.

Problems with the Plan

1. Safety Issues

The road poses several safety concerns, some of which were specifically mentioned at the meeting during the public comment section. However, these safety concerns were overlooked. Mr. MacDonald, town's traffic engineer, states "the proposed street adjacent to 958 Commercial street serving 4 residential units would handle less trip production than some residential driveways, and thus for evaluation purposed could be treated as a driveway." The theory of treating the road as a driveway is blatantly incorrect. The subdivision at 958 Commercial Street is proposing a road, not a driveway. It is a road and should be treated as such. The deprivation of calling a road "a road" aids in the relinquishment of safety concerns. The alteration of the reality of the situation is unconstructive except as a mean to attempt to justify the approval of the proposed road.

Where two roads meet, an intersection is created. The Institute of Transportation Engineers and the U.S. Department of Transportation issued a brief in April 2004 discussing access management as a key to safety and mobility. It states "The functional area of an intersection is that area beyond the physical intersection of two roadways that comprises decision and maneuvering distance..." "Driveways located within the functional area may create too many conflict points within too small an area for motorists to safely negotiate." The briefing goes on to state "Driveways should not be located within the functional area of an intersection." The edge of the road approved by the planning board was about 2 feet from the curb cut opening for the driveway at 968 Commercial Street. The Massachusetts Highway Department Project Development & Design Guide states "Driveways that are spaced too closely can impact through traffic operations when a driver must monitor more than one right turn merging movement (called right turn conflict overlap)..."

These hazards are not new and there are rules and regulations that exist to prohibit such dangerous conditions. In the Traffic Engineering Handbook issued by the Institute of Transportation Engineers, it lists the "Basic Principles" that underline access management. They list "Separate conflict areas", "Limit the number of conflict points", and "Preserve the functional section of intersections and interchanges." When questioned about the access management rules of the town, Mr. MacDonald stated "town standards regarding access management can be found in the subdivision regulations". The regulation Mr. MacDonald is referring to states "Driveway cuts shall not be within sixty-five feet of the intersection of the center line of intersecting streets". This rule prohibits a driveway from being too close to an intersection and creates a safe spacing barrier. However, the town's Principal Planner has stated that access management related information, and specifically, the aforementioned rule, is only applicable within subdivisions. This would leave a severe lack of regulations governing the relationship of the subdivision to the surrounding area.

A deeper look into the specific history of the Weymouth Planning Board shows that their stance on this rule has somehow changed. In fact, it is well documented that a waiver from the Planning Board for the "65 foot" rule for the same situation has been requested in the past. The access management regulations found in the rules and regulations have the intent of being fully applicable to the relationship of the subdivision to the surrounding area. The Planning Board has followed these rules in the past, but the town's current interpretation leaves no general application of access management rules. The center line of the road accepted by the Planning Board was 30 feet from the driveway and in clear violation of the rules and regulations. In fact, in an email to the town's Principal Planner, the Assistant Town Engineer, Jim McGrath, who is aware of this rule, raised this very question.

To be clear, it is part of the Planning Board's role to ensure the adequacy of a public way and its relationship to adjacent public ways. The State of Massachusetts has general Subdivision Control Laws in place. The State Law's purpose reads, "The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is..." The State Law further declares in the purpose of the law that "The powers of a planning board...shall be exercised with due regard...for lessening congestion in public ways and in the adjacent public ways: for reducing danger to life and limb in the operation of motor vehicles." The Weymouth Planning Board did not uphold their attempt to approve this plan.

Even though the definition of the purpose seems clear and detailed, developers have unsuccessfully tried to mitigate the Planning Board's role in this area in the past. In the court case of North Landers Corp v Planning Board of Falmouth, the court upheld the Planning Board's disapproval of a subdivision plan that cited the inadequacy of a public way. The court determined that the Subdivision Control Law allows the Planning Board to consider the condition of adjacent public ways outside the subdivision. Yet somehow the Weymouth Planning Board fails to follow this law in addition to their own regulations.

At the October 18, 2016 meeting, the developer noted he paid for a traffic engineering report for safety. A look at the report will show the only safety aspect examined was the stopping sight distance. No further safety aspects were examined.

Problems with the Plan

2. Reserve Strips Not in the Public's Best Interest

One of the vital elements that establish a neighborhood's character is the town's frontage requirements. The zoning laws in Weymouth mandate 18 feet of frontage, broadly meaning a house must sit at least 18 feet from the street. At the Planning Board meeting on October 18, 2016 Mr. Deady is asked about a 10 inch strip of land that runs alongside the proposed road, abutting 968 Commercial Street. He admits it is to stop the creation of a hardship because the house at 968 Commercial Street sits a mere 10 feet from the proposed street. The character of the neighborhood is being ruined by the circumventing of the zoning laws in place.

However, there is a regulation in place that would stop this circumventing practice, but the Planning Board refuses to take the rule into considerations. In the Rules and Regulations of the Planning Board it states, "Reserve strips prohibiting access to streets or adjoining property shall not be permitted, except where, in the opinion of the Board, such strips shall be in the public interest." This strip of land is not in the public's best interest as it aids in ruining the character of the neighborhood. Having a house 10 feet

from a street is not in the public's best interest. Removing the strip of land would require moving the street over, and potentially losing one of the houses. It is clearly in the developer's best interest to maintain the strip of land as he attempts to maximize profits at the expense of the character of the neighborhood. Let it be also noted that the close proximity to a street will also have a negative effect on appraisal values.

Problems with the Plan

3. Technical Plan Design

Back in September Mr. McGrath, Assistant Town Engineer, noted to the Principal Planner that the Planning Board's Rules and Regulations, section 6.3.1 states that the roadway centerline must be coincident with the street centerline. On January 9, 2017 Mr. McGrath suggests to the Principal Planner that the centerline vertical curve data should be reviewed by the traffic engineer to confirm compliance with the subdivision regulations. I believe he suggests this is because it still does not conform.

But perhaps most importantly, please note comment #6 from Mr. McGrath's most recent comments. He states "Insufficient data is provided to mathematically close the proposed Right Of Way. The Right Of Way distances do not tie back to the existing property lines so exact placement of the new Right Of Way is not possible."

If we don't know where the road is actually going to be, we cannot make any certain determinations regarding its conformity with the rules and regulations and any attempt to do so would most certainly not be in the best interests of the community.

During this Farren Road hearing Mr. Berg has mentioned the importance of tangential radii. The plan appears to have the same radius, however, the left side appears somewhat tangent and the right side is not close to tangent; which defeats the purpose of the radius. This also explains why the traffic engineer's comment regarding the turning of large vehicles is nearly identical from May to January. In May with a 6' radius the right turn into the proposed road would require the entire width of subdivision roadway. In January, with 40' foot radius, Mr. McDonald states the right turn would require most of the width of the proposed road.

Pat O'Leary 999 Commercial Street

Ms. O'Leary stated she is not a direct abutter; not being able to see comments from the various departments makes it difficult for abutters to make most productive comments tonight.

Chairman Williams asked staff about this; Mr. Schneider stated all information is available at Planning Department. Attorney Callanan stated they are available at Town Hall in the Planning Department. A court would not throw out an approval because the information was not on website when information was available at Town Hall.

Stephanie Coite 972 Commercial Street

Ms. Coite stated within 24 hours of the last meeting the information on line was stating this application was approved. If documents should be available then they should be available. They were not available online. The public has not been properly informed. Ms. Coite asked if documents are supposed to be available then they should be available; the public was not properly informed. The town website states this is a 3 lot plan, it also states this application has been approved. This information was brought to the Planning Board's attention that the website was incorrect. How is this talked out of?

Wayne Mathews
952 Commercial Street

Mr. Mathews asked Attorney Callanan if he is familiar with the case about Patalle v Town of Woburn. Attorney Callanan stated yes, it was regarding inadequate information to the public. The court remanded the case back to the Planning Board because the information to the public was inadequate, could this be the same? Since October 19, 2016 the website has told the public that this application has been approved. Additionally, the plan says 3 buildable lots. The official denial letter, which was written by either Planning Board or Planning Department, says 4 buildable lots. So there is a definite confusion here with the public that needs to be addressed; in fact multiple incidences, the website and public notifications that have been sent out. These need to be addressed because of the erroneous errors.

Mr. Mathews stated he has the right to request a site plan visit to discuss the traffic conditions or the blind spot turning left off of Unicorn Street and towards the development.

Mr. Deady stated this is the fifth time he has changed the plan. It is late in the game and unfair to ask for a site visit now.

Dennis Coite
972 Commercial Street

Mr. Coite produced evidence to Planning Board of material misrepresentation. Exhibit A.

Dan Daly
28 Fisk Avenue

Mr. Daly stated he is no completely confused, 4 lots or 3 lots. This whole thing should just start over again.

Councilor Kenneth DiFazio
District 3

Mr. DiFazio asked will Planning Board respond to every one of the alleged violations that Mr. Mathews presented tonight? How will Planning Board leave it with the public?

Chairman Williams stated to Mr. DiFazio she plans to move for a continuance of this matter. Chairman Williams also stated she hopes Councilor DiFazio will review these plans carefully.

Mr. Berg stated he will also want a continuance and asked both Mr. Coite and Mr. Mathews to hand in their speeches so Planning Board can deliberate.

Mr. Luongo asked Solicitor Callanan what is the timeline for a continuance. Solicitor Callanan stated reconsideration is 120 days from public hearing. Mr. Schneider stated he just checked and its 135 days.

Mr. Deady stated he thought he was here with the 2 fixed items, feels vote should take place tonight and he should be all set tonight.

Mr. Berg stated he wants to be on record as supporting those two waivers. However, tonight many items have been brought to planning board's attention and planning board wants to clear those items.

Mr. Deady stated he wants approval today on the two items so he can begin work.

Mr. Schneider and Mr. Luongo stated they have heard some items mentioned tonight and they are not issues to postpone this subdivision.

Mr. Berg made a MOTION to CONTINUE the PUBLIC HEARING for 958 COMMERCIAL STREET, WEYMOUTH, MA to February 7, 2017. Mr. Nayak SECONDED the MOTION. It was UNANIMOUSLY VOTED.

ANR – White Street

Mr. Luongo stated parcels transferred known as public benefit; transferring land so that White Street subdivision can take place.

Mr. Rotondo made a MOTION to APPROVE the ANR for White Street. Mr. Nayak SECONDED the MOTION. It was UNANIMOUSLY VOTED.

NEXT MEETING

The next meetings of the Planning Board will be held on February 7, 2017.


ADJOURNMENT

Mr. Berg made a MOTION to ADJOURN at 10:20PM. Mr. Nayak SECONDED the MOTION. It was UNANIMOUSLY VOTED.

Respectfully submitted,

Christine Malloy
Recording Secretary

Approve



Sandra Williams, Chairman

Dated:

