

TEWKSBURY PLANNING BOARD MINUTES  
January 23, 2023

**Call The Meeting to Order**

Chairman Stephen Johnson called the meeting to order at 7:03 P.M. Present at the start of the meeting were Robert Fowler, Vincent Fratalia, James Duffy & Jonathan Ciampa.

(A) **Approval of Minutes** – November 28, 2022

**MOTION** – Mr. Ciampa made a motion to approve the 11/28/22 minutes. The motion was seconded by Mr. Fratalia and unanimously voted 4-0. Mr. Duffy abstained from voted as he was not present for the 11/28/22 meeting.

(B) **Committee Reports/ Administrative Actions**

(B1) **Committee Reports**

(B2) **Town Planner's Reports**

**300 Ames Pond**

I am sure most everyone knows at this point, but I wanted to ensure that the Board knew that Hanover Group terminated its agreement with the owner of 300 Ames Pond to develop the proposed 40B project.

Since this project is no longer coming through, it is of even more importance that we continue as a Town to diligently find improved ways to create diverse affordable housing.

**Farmall Way (920-978 Livingston Street) – Special Permit Conditions**

The Board approved an Open Space Residential Subdivision in 2021. Throughout the public hearing, it was established that this would remain a private way permanently. However, the developer was still required to submit a subdivision bond to ensure the completion of the roadway. This is typical of public subdivisions, but not private. The developer has requested the removal of the following special condition:

*Prior to the Building Permit(s) being issued the roadway shall be brought to binder and the Applicant shall post a subdivision bond, to be calculated by the Town Engineer based upon the final approved design, in the form of a savings passbook with the Town of Tewksbury or such alternative security acceptable to the Board.*

In addition to striking this condition, after consulting with concerned Town Departments, I recommend the Board also include the following conditions:

- a) Revise the Homeowner's Association (HOA) agreement to include responsibility for finishing the road, in lieu of the roadway bond.
- b) Require the developer to relocate the driveway for the existing #950 Livingston Street prior to gaining occupancy on the construction of the second home in the subdivision.
- c) Add a condition that states the road is to be maintained as a private way in perpetuity.

If the Board is amenable to these changes, I can issue a minor administrative modification to the special permit and subdivision approval. The other option would be to request the developer submit an application for a formal modification and public hearing. I think the administrative modification accomplishes the ultimate goal of balancing developer needs with Town interests.

Mr. Johnson stated he had no issue with this, if the developer does then they will have to file & come in.

Mr. Ciampa asked if the change would cause concern for how residents got in and out of this subdivision. Ms. Lowder stated there wouldn't be a substantive change at all, there weren't any abutter concerns during the original hearing.

## TEWKSBURY PLANNING BOARD MINUTES

January 23, 2023

Mr. Fratalia asked if this needed to be in writing for the developers to sign off on. Ms. Lowder stated he would issue it as a formal administrative modification that the Chair signs like any other, she sent this exact language to the developer, and they were ok with it.

Mr. Duffy asked if the unlikely event they do not finish the road and cars begin tracking mud from the private way to the public way is the only issue that could arise. Ms. Lowder stated putting the finishing of the road on the HOA & having it be their formal responsibility would also make them responsible for any issues that come from that. Mr. Duffy asked if there was a timeline on the binder, Ms. Lowder stated they would need to be brought to binder prior to receiving occupancy for all of the homes on that road.

**MOTION** – Mr. Ciampa made a motion to approve the administrative change as presented. The motion was seconded by Mr. Fowler and unanimously voted 5-0.

### **(B3) 255 Salem Street/Border Road – As-Built Acceptance**

Jim Hanley appeared for the As-Built Acceptance for 255 Salem Street/Border Road. Mr. Hanley asked about the 3<sup>rd</sup> item on the town planner's list stating he thought it could go to the HOA with the other 2 open space lots.

Mr. Johnson stated he didn't recall why they did it with lot 1, Ms. Lowder stated it was 2016, she hasn't looked back that far, she just knows that it says it has to go to HOA. Mr. Johnson then stated they would look into it and as long as no one finds a problem he has no issue.

Mr. Duffy asked the status on the open space for lot 1, Mr. Hanley clarified what he is asking is that instead of it going to the lot 1 ownership it would go to the open space which is owned by all 4 lots. Mr. Duffy then asked the purpose of dividing up the open space to get to the 4 lots, Mr. Hanley stated there is an HOA that takes care of the open space altogether which it 4 lots it just makes sense to include this open space parcel as part of the to make sure it does get maintained instead of putting the burden on one homeowner. Mr. Duffy agreed with Mr. Johnson that he would like to dig a little deeper.

Mr. Fratalia stated he thought adding the land to the HOA makes sense.

Mr. Ciampa also agreed it makes sense to have it maintained by the HOA with the other open space areas rather than placing the burden on a single homeowner.

Mr. Johnson stated pending on finding out the specific reason they did that Mr. Hanley has a tentative ok.

### **(B4) 1009 Livingston Street – As-Built Acceptance**

Jim Hanley appeared for the As-Built Acceptance for 1009 Livingston Street. Mr. Hanley stated he received letters from both Ms. Lowder & the DPW and there's a handful of comments so he's not in a position to ask the board for consideration for reduction of bond & support for making it a public way. Hopefully he'll be back in 2 weeks with some answers for it all.

### **(C) 770 Main Street – Butler School, LLC on behalf of The Cariciofi Realty Trust: Site Plan Review, Land Disturbance Permit (continued from 1/9/23)**

Applicant requested continuation to 2/13/2023.

**MOTION** – Mr. Fowler made a motion to continue the Site Plan Review & Land Disturbance permit for 770 Main Street to 2/13/23 @ 7:00 PM. The motion was seconded by Mr. Duffy and unanimously voted 5-0.

### **(D) 118 Lumber Lane – 118 Lumber Lane LLC – Site Plan Review, Special Permit, Land Disturbance Permit**

Applicant requested continuation to 2/13/2023.

TEWKSBURY PLANNING BOARD MINUTES

January 23, 2023

**MOTION** – Mr. Fratalia made a motion to continue the Site Plan Review, Special Permit & Land Disturbance Permit for 118 Lumber Lane to 2/13/23 @ 7:10 PM. The motion was seconded by Mr. Ciampa and unanimously voted 5-0

**(E) 2504 Main Street – Steve Doherty – Site Plan Review**

**MOTION** – Mr. Fowler made a motion to waive the public reading. The motion was seconded by Mr. Ciampa and unanimously voted 5-0.

Jim Hanley appeared for the Site Plan Review for 2504 Main Street. Mr. Hanley stated that he was there to propose a change in use for a building that has in excess of 1,000 sq.ft. Mr. Hanley then went over the existing conditions which was previously a Sal's Pizza. Mr. Hanley then went on to present the proposed site plan citing specific improvements. In regard to the traffic consideration mentioned in Ms. Lower's letter Mr. Hankey stated that they are increasing the number of parking spaces, he doesn't think there's really going to be an impact on traffic in that location. Mr. Hanley then asked for clarification on how previous waivers would apply & if new ones were necessary. Mr. Hanley closed by stating that, if granted, this site would be going on to the recreational marijuana process.

Ms. Lowder stated that where site plan review & approval is required all portions & provisions from the bylaw have to be met even if it's a pre-existing non-conforming structure. Unfortunately some stuff will have to be rehashed & does require waivers, the issue with the 30% minimum open space is that's dimensional & not specifically called out was waivable so that would have to go to the ZBA for dimensional variance.

Mr. Johnson clarified that they need 12 spaces to be compliant but they currently have 18 then asked if they lost those 6 spaces how much open space they'd pick up. Mr. Hanley stated they went through that exercise already and showed their perspective on the plan.

Mr. Fratalia asked if the 12 spaces included employees or not. Mr. Hanley stated they are required 11.5 spaces based on the floor are of 25,000 sq.ft. Mr. Fratalia asked how many employees would be on site on a regular day. The applicant stated 5 or 6. Mr. Fratalia then questioned if 7 spaces were enough for customers. Mr. Hanley stated his goal is comply with the town bylaw and make sure the owner can run their operation and went into an explanation on how they worked out the current site plan. Mr. Fratalia stated there was discussion the previous meeting about being within 5' and he doesn't agree with this either.

Mr. Ciampa clarified that they were at 16% open space & they needed to get to 30% Mr. Hanley stated its about 2,500 sq.ft. Mr. Ciampa asked if in order to achieve that they would close off 25% of the entire lot & make that open space. Mr. Hanley stated he believes they can achieve the 30% he's just not sure exactly how yet. Mr. Ciampa asked Ms. Lowder if the Fire Department had reviewed the site, Ms. Lowder stated they had & because it's a pre-existing site, unless there were changes like closing off certain portions as mentioned, they don't have any comment. Mr. Ciampa then stated if the parking spaces within 5' of the lot line are extra spaces he'd like whatever can be done to be in conformance then continued to ask the estimated customer turnaround time and if 7 spaces would be sufficient or would they overflow into neighboring lots. Mr. Hanley stated he would like to coordinate with the other developer and get back to him next time they come. Mr. Ciampa then questioned if the only proposed restroom is located on the second floor, he's not sure if ADA Regulations are in their purview but it stood out to him.

Mr. Duffy stated he was ok with the waiver to reduce 30% to 15% where it's an existing building. Mr. Duffy then asked if there is a loading area on the new plan. Mr. Hanley then showed on the plans where the current load area is and stated it would be done in off hours. Mr. Duffy asked what Mr. Hanley's plan for the access easement was. Mr. Hanley stated he did not know yet, they have right to the area, the existing entrance doesn't go all the way to the access & neither does the proposed. They could make those modifications to change it, he thinks it works better how its designed right now. Mr. Duffy asked if the easement was recent, Mr. Hanley's understanding was that it was part of the original plan. He continued that when they address the Planner & DPW comments they'll coordinate with the attorney and try to figure out the right way to approach that.

Mr. Fowler asked the ability for them to use the condo parking, Mr. Hanley stated they were investigating that right now. Mr. Fowler then stated that would iron out a lot of the problems.

Mr. Johnson stated that 5.3.3 is not for this board to waive, he continued to say he wouldn't be opposed to splitting the difference of all the spaces to get all the way to 30, if they are willing to give a waiver at another percentage that's not an

## TEWKSBURY PLANNING BOARD MINUTES

January 23, 2023

issue, just keep the boards recommendations in mind. Mr. Johnson then stated that they just passed a new bylaw that states the number of spaces they need, he's not comfortable holding this applicant to a different standard by saying he needs more than 12 spaces is them going against the bylaw. Mr. Johnson continued by saying as far as the parking being close, its an existing lot, he doesn't see someone coming in and that not happening no matter who the petitioner is. Mr. Johnson then stated since he can be asked for it at a later date he would rather just deal with it up front so if he could do that he should.

There were no questions from the audience.

**MOTION** – Mr. Duffy made a motion to continue the Site Plan Review for 2504 Main Street to 2/13/23 @ 7:15 PM. The motion was seconded by Mr. Fratalia and unanimously voted 5-0.

### **(F) Foster Lane – O'Brien Homes LLC – Land Disturbance Permit (*continued from 1/9/23*)**

Kevin O' Brien appeared for the Land Disturbance Permit for Foster Lane. Mr. O' Brien stated all the comments from the previous meeting have been addressed on the plan. Mr. Johnson clarified that this is only referencing the actual property not Foster Lane as the previous plan had.

Mr. Fratalia clarified that Mr. O' Brien only planned to disturb the land he owned and not the entrance to the street, Mr. O' Brien confirmed that was correct. Mr. Fratalia then asked why he would want to move ahead with this when he doesn't have access to the street. Mr. O'Brien sated he would get the application in and get a result.

Mr. Johnson clarified what they were voting on, if it meets the criteria for a Land Disturbance permit then they sign off, if there's an issue that gets dealt with elsewhere. If he wants to disturb his land that he may not have access to that for him to decide, not the board & the rest will be dealt with amongst others. He is ruling on only what is in front of him.

Mr. Johnson opened the meeting up to the audience.

David Plunkett, 257 Fiske Street – Mr. Plunkett stated as he did at the last meeting that this lot has no right of access over the area known as Foster Lane. At the last meeting there was indication Town Council was going to issue an opinion & he would receive a copy of this opinion but he has not received anything. Mr. Plunkett then stated he believed the abutter's list was incorrect because it only included 4 parcels, not the road itself, he then asked since there was a change of the application should be re-submitted. Mr. Johnson stated since they are no longer dealing with the Foster Lane piece he's not going to address it any further since it's been removed from what they are considering. They were given no indication from town council that there'd be any issue with continuing with the piece that's simply owned by the applicant. Mr. Plunkett asked if there was anything written by town council, Ms. Lowder stated she met with town council again last week researching this case looked at the definition of abutter in the land disturbance provisions just Ch. 19 of the general bylaws & that only calls for direct abutters which actually captures the same people that are caught by the 100' that they do. In capturing the 100' is does capture the direct abutters to Foster Ln, Mr. Plunkett questioned that it was abutters of Foster Ln, Ms. Lowder explained further what a direct abutter is, Mr. Plunkett stated he did not agree. Ms. Lowder then went over the 3 possible paths forward discussed with town council. Mr. Plunkett repeated that he was told last meeting he would receive something in writing that the applicant has no access over the area known as Foster Lane.

Jim Andella, 70 John E Smith Dr – Mr. Andella stated he was a direct abutter to the applicant's property & he is just finding out about the 28 year-old lawsuit. Mr. Johnson stated they are not going to relitigate whatever is going on in court there. He continued that as Ms. Lowder just stated, they've been advised by town council to make a decision on the Land Disturbance permit for the lot only, anything else that has to do with access are to be dealt with elsewhere. The fact that the land disturbance permit may ultimately be of no use isn't for the board to decide, it is simply if the requirements are met they grant the permit. Mr. Andella stated he did not agree, he does have title and he does own Foster Lane himself. The ConCom gave the applicant a permit and he already cut all the trees on Foster Ln. Mr. Johnson stated this is not the same type of decision issued by the court for the decision Mr. Andella said he just found out about recently, that's not what this is he's not being granted something that's going to cause him to use Foster Ln. Mr. Andella questioned how he would get to the lot, and Mr. Johnson again stated that is not the concern of the board, the land disturbance permit only deals with the lot in question. If they simply refused to make a decision then they have a whole different issue with the petitioner so they have to do what they are required to do with what is front of them.

## TEWKSBURY PLANNING BOARD MINUTES

January 23, 2023

Mr. Ciampa asked if this was a putting the cart before the horse type of thing, asking for the ability to improve the property if he gains access which he doesn't currently have. Mr. Johnson stated again that it does not matter if it doesn't make sense to them, that is an issue beyond the purview of the board.

Mr. Duffy stated he understands they are only in a position to vote yay or nay on the land disturbance permit for parcel itself. He doesn't feel comfortable with this & he thinks its an issue for lawyers to work out, he intends to support the land disturbance but he just doesn't feel good about it.

Mr. Johnson stated he doesn't necessarily disagree that this is something they need to take a look at, he feels like they are being put in an odd position, they need to look at putting a little more detail in it to explain why they make decisions on these regardless of side issues, he cant imagine other towns or cites have to deal with this like they do. Ms. Lowder stated they are actually unique in issuing a Land Disturbance permit, other towns/cities capture it in other permits through other boards, theirs is a town bylaw & is not subject to the same kind of review. Mr. Johnson asked to look into how others are doing this because he doesn't know why they are the outliers in this. Right as it may be for the board to issue a decision the confusion & consternation it causes makes it hard for everyone to understand. Ms. Lowder stated it si being reviewed internally to see if there is a better avenue for issuing these permits.

**MOTION** – Mr. Duffy made a motion to close both parts of the hearing. The motion was seconded by Mr. Ciampa and voted 4-0.

Mr. Fowler abstained from the Land Disturbance vote.

**MOTION** – Mr. Johnson made a motion to approve the Land Disturbance Permit for Foster Lane with revised plan. The motion was seconded by Mr. Duffy and voted 3-1, Mr. Fratalia voted no.

### **Old Business**

Mr. Fratalia brought up the Treehouse Brewery headlight issue & Ms. Lowder stated that the owners of the property have been informed & they are workshopping ideas to mitigate that. Being winter plantings don't make sense right now but they are aware & have an application for their common vic. & alteration of premises at the next select board meeting and she expects they're going to be discussing items like that. Mr. Fratalia stated he's still getting complaints from elderly residents of cars taking the corner and blaring in their eyes its going to cause a problem. Ms. Lowder stated that was reiterated to them during a staff meeting last week & she believes they plan to address it when they come for their common vic. Mr. Fratalia asked where they stood with the tree removal that happened at Main & Pleasant. Ms. Lowder stated she sent a letter to the property owner via email & snail mail, the asst. town manager also followed up with the property owner & their council is supposed to be reaching out to her with a remedy.

Mr. Johnson asked if the Treehouse issue isn't dealt with by the board of selectman that doesn't prevent them for having them come in, Ms. Lowder stated the issue with that is the way they would remedy that is planting on their property so it wouldn't be part of any landscape plans they have on their property which is why they are supposed to be meeting with Eagles Landing to discuss items like that to try and reach a common resolution because it wouldn't be something that would be modifying their site plan in any way. Mr. Johnson clarified he was talking about the delivery area & Ms. Lowder stated she would communicate this to them. Mr. Johnson stated that is should be communicated to them to put back something as close as possible to what came out, not some sapling that will take time to grow. Mr. Duffy stated when an applicant comes I they always talk about trespass from building lighting & its generally addressing in the electrical & building codes, but it's never discussed as traffic type lighting, he thinks that's something going forward. Mr. Johnson stated this is such a new thing with the pick-up this isn't something that was anticipated. Mr. Ciampa asked if they could just issue a memo that they ask customers to park tail in with the headlights facing the country club, Mr. Johnson said he'd be leery of this because he doesn't want to responsible when someone cant back up into a space. Mr. Johnson suggested they do whatever they can do as quickly as they can.

### **New Business**

Mr. Fratalia asked if any more applicant would be coming in for marijuana site review, Ms. Lowder stated no one has submitted, she expects they will start rolling in soon.

# TEWKSBURY PLANNING BOARD MINUTES

January 23, 2023

Mr. Duffy announced that the 10<sup>th</sup> edition building code rolled out January 1<sup>st</sup> of this year & includes an update stretch energy code which enables the town to be designated a green community. This designation opened up grant funding which the town utilized to make energy improvements to municipal buildings. To date these grants have totaled over 1 million dollars & with the implementation of these energy improvements has resulted in 20% or more in energy usage over the last 11 years in municipal buildings & schools.

## Correspondence

## Adjournment

**MOTION** – Mr. Duffy made a motion to adjourn the meeting at 8:29 P.M. The motion was seconded by Mr. Fowler and unanimously voted 5-0.

Approved on: **February 27, 2023**

### *List of Documents for 1.23.23 Meeting*

*Documents can be found in the Community Development Office*

- A. 7:00** Approval of Minutes: November 28, 2022;
- **Meeting Minutes for November 28, 2022**
- B. 7:00** Committee Reports/Administrative Actions
- 1- Committee Reports
  - 2- Town Planner's Report
    - **Memo from Alexandra Lowder dated 1/20/2023**
  - 3- 255 Salem Street/Border Road – As-Built Acceptance
    - **Letter from Civil Design Consultants dated 12/23/2022**
    - **As-Built Plan dated 12/16/2022**
    - **Memo from Alexandra Lowder dated 1/20/2023**
    - **Email from Kevin Hardiman dated 1/20/2023**
  - 4- 1009 Livingston Street – As-Built Acceptance
    - **Letter from Civil Design Consultants dated 12/23/2022**
    - **As-Built Plan dated 12/27/2022**
    - **Memo from Alexandra Lowder dated 1/20/2023**
    - **Letter from Kevin Hardiman dated 1/20/2023**
- C. 7:00** 770 Main Street – Butler School, LLC on behalf of The Cariciofi Realty Trust: Site Plan Review, Land Disturbance Permit (*continued from 1/9*) – **applicant requested continuation to 2/13**
- **Waiver request letter dated 1/17/2023**
  - **DPW response letter dated 1/17/2023**
  - **Traffic memo prepared by TEPP LLC dated 1/16/2023**
  - **Revised site plans dated 1/17/2023**
  - **Proposed waivers and conditions dated 1/20/2023**

TEWKSBURY PLANNING BOARD MINUTES

January 23, 2023

**D. 7:05** 118 Lumber Lane – 118 Lumber Lane LLC: Site Plan Review, Special Permit, Land Disturbance Permit – ***applicant requested continuation to 2/13***

- **Application packet dated 12/21/2022**
- **Letter from Fire Prevention dated 1/18/2023**
- **Memo from Alexandra Lowder dated 1/20/2023**
- **Letter from Kevin Hardiman dated 1/20/2023**

**E. 7:10** 2504 Main Street – Steve Doherty: Site Plan Review

- **Application packet dated 12/22/2022**
- **Memo from Alexandra Lowder dated 1/20/2023**
- **Letter from Kevin Hardiman dated 1/20/2023**

**F. 7:15** Foster Lane – O'Brien Homes LLC: Land Disturbance Permit (*continued from 1/9*)

- **Letter from Andover Consultants Inc dated 1/12/2023**
- **Revised plan dated 1/11/2023**
- **Email from Attorney Don Borenstein dated 1/19/2023**
- **Memo from Alexandra Lowder dated 1/20/2023**
- **Letter from Kevin Hardiman dated 1/20/2023**

**Old Business**

**New Business**

**Correspondence**

**Adjournment**