



**BOXBOROUGH PLANNING BOARD**  
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John Markiewicz, Chair    Eduardo Pontoriero, Clerk    Nancy Fillmore    Abby Reip    Hongbing Tang

**Meeting Minutes**  
**August 29, 2016**  
**7:30 PM**  
**Morse-Hilberg Room, Town Hall, 29 Middle Road**

Members Present:

John Markiewicz, Chair  
Eduardo Pontoriero, Clerk  
Nancy Fillmore, Member  
Abby Reip, Member  
Hongbing Tang, Member  
Adam Duchesneau, Town Planner

The Chair called the meeting to order at 7:32 PM.

**Meeting Minutes of August 15, 2016**

Mr. Markiewicz MADE a MOTION to approve the minutes of August 15, 2016. Ms. Fillmore SECONDED the MOTION. All members voted in favor.

**Correspondence**

Mr. Duchesneau indicated the Planning Board had received a memorandum from the Town's Consulting Engineer, Places Associates, Inc., regarding the latest Site Plan which was submitted for the 1034 and 1102 Massachusetts Avenue Site Plan Approval application. The Planning Board indicated they would prefer to discuss this item during the public hearing for this matter later in the meeting.

Mr. Markiewicz noted the Board of Selectmen were looking for a Planning Board volunteer to be part of the Public Safety Building Committee. Ms. Reip indicated she would be interested in serving on this committee and Mr. Markiewicz stated he would be willing to share these duties with her as well.

**Boxborough2030 Implementation – Short Term and On-Going Action Item Responses**

Mr. Duchesneau stated he had received a number of responses from various Town departments, boards, and committees regarding the status of the short term Action Items in Boxborough2030 for which they were responsible. He asked the Planning Board if they would prefer to review these responses before having a Joint Public Meeting with the Board of Selectmen as the Implementation Committee. The Planning Board reached a consensus that they would prefer to meet internally to discuss the various responses before having a Joint Public Meeting with the Board of Selectmen.

**1034 & 1102 Massachusetts Avenue (Lawn Barber, Inc.) – Site Plan Approval Application – Applicant Phaneuf RT (Lawn Barber, Inc.) seeks approval to allow the erection of a free standing hoop house structure, relocation of parking spaces, repositioning of landscape and masonry materials and other storage, and other site improvements**

Mr. Markiewicz reopened the public hearing for the application at 7:46 PM. Attorney Lou Levine was present to discuss the application with the Planning Board. Mr. Levine stated that in the last two weeks the Building Inspector had issued an enforcement order on the property regarding the use of the hoop house building. He stated that no Site Plan Approval had been required when the building was originally permitted and that the current Site Plan Approval process has been on-going for the last six months. Mr. Levine noted the current Staff Report for the application calls for a number of conditions to be imposed on the property if the building is allowed to be retained. Mr. Levine also indicated the Building Inspector has now determined the building needs a Variance to remain as it currently stands, or a Special Permit to attach it to the adjacent garage building.

Mr. Levine noted the Town has revisited its interpretation regarding the Noise Bylaw in the last few weeks after consulting with Town Counsel. Mr. Levine stated that no matter what happens at the site, there is an alleged noise issue at the property. He noted the Applicant's project team has filed an action in the Land Court to interpret the noise provision of the Zoning Bylaw. Mr. Levine stated that given the situation over the last few weeks, Lawn Barber, Inc. will be taking down the hoop house building. Mr. Markiewicz noted that even with no hoop house building at the property, there is still the issue of the business operation being out of compliance with the Noise Bylaw. Mr. Markiewicz asked if the Applicant has filed an action with the Land Court to get further clarification on this matter and Mr. Levine indicated that was correct. Mr. Duchesneau noted Site Plan Approval is triggered when a new building is erected, an existing building is expanded beyond a certain amount of square footage, or when an additional parking area is created.

Mr. Levine stated the Applicant would be filing with the Zoning Board of Appeals to seek a Special Permit to connect the hoop house building to the existing garage building at the property. Ms. Fillmore asked what will happen while the Land Court is going through their process to make their determination on the matter. Mr. Duchesneau stated he and the Building Inspector would consult and determine how they would be enforcing the existing Noise Bylaw language in the Zoning Bylaw. Mr. Pontoriero asked, if the hoop house building were to be removed, how would the other items of concern at the subject property be addressed if Site Plan Approval were no longer required. Additionally, Mr. Pontoriero asked what paths the Planning Board could take while the other items of concern unfolded. Moving forward, Mr. Duchesneau indicated the Planning Board could either issue a decision on the Site Plan Approval application before them, the Applicant could withdraw the existing application, or the Planning Board could even choose to continue the application to a later meeting date.

Mr. Pontoriero wanted to know what the intent was of the Applicant. Mr. Levine noted the Applicant has spent a significant amount of money during the Site Plan Approval application process and they would like to continue to move forward with the application. However, he also pointed out that life may be simpler without the hoop house building at the property. Mr. Levine indicated the wetland issues have been addressed, the Massachusetts Department of

Environmental Protection (MassDEP) permitting will be handled, and the Applicant is continuing to work with the Board of Health as well. Mr. Levine also stated the Applicant has cut stone at this location in the past.

Mr. Markiewicz noted the Planning Board has been working on a decision for this application for quite some time. He continued on to state the Planning Board could move forward and issue a decision, but it would be meaningless if the hoop house building comes down. Mr. Levine stated the Applicant will decide in the next week or so whether or not to apply for a Special Permit. He continued on to note that even if a Special Permit was awarded by the Zoning Board of Appeals to be able to expand the existing garage building, the Applicant may decide to not act on the permit. Mr. Levine then indicated the Applicant will most likely apply for a Special Permit and see how that process plays out, but the economics of the situation may not be conducive to erecting the building. Mr. Levine then requested the Site Plan Approval application be continued until the Planning Board's meeting on Monday, September 18, 2016.

Mark White of 93 Sara's Way stated the stone cutting at the property has not occurred any further in the past than January of 2015. Larry White of 71 Sara's Way indicated he felt the stone cutting had been occurring outdoors with saws prior to the hoop house building being erected. Then, when the hoop house was completed, Larry White believed highly mechanized equipment had been brought in to cut stone. Larry White stated he and his brother Mark had brought this to the attention of the Town. Larry White also indicated he had spoken with the previous Building Inspector, David Lindberg, and Larry White stated Mr. Lindberg had intended the for the hoop house building to be a temporary building.

Mark White stated he believed the cutting of stone at the property was a change of use at the property, which he felt required Site Plan Approval. Mark White indicated he felt taking down the hoop house building will create a situation where the Applicant is simply cutting stone outdoors. He noted a Cease and Desist Order for the use of the hoop house building has been issued and it is being ignored.

Larry White indicated the Applicant did not apply for the appropriate permits to erect the hoop house building, they have also discharged wastewater from the stone cutting operation into the wetlands, and he felt they have lied on many occasions throughout the process. Larry White stated it was his understanding there are state and federal laws regarding noise, and local municipalities cannot be less stringent with their noise regulations. He continued on to note he believed that saying the Applicant's sound study is in compliance with the Zoning Bylaw is completely ridiculous. Larry White stated he felt the Applicant was also violating septic system and water requirements. He continued on to point out Mr. Levine is suggesting the Applicant had been compliant with all regulations prior to the erection of the hoop house building and he felt this was simply not true. Larry White noted the Applicant has changed their use from a landscaping company to a manufacturing use (stone cutting) and he did not believe this could be done without any approvals from the Town. He continued on to state how he felt the Planning Board should deny the Site Plan Approval application and seek an injunction against the Applicant requiring them to comply with all applicable regulations.

Cynthia Pockalry of 71 Sara's Way referenced what she viewed to be the hours of operation of the business and felt the business was running every single day. She indicated the noise was extremely bad the previous Saturday and there was a huge plume of stone dust moving up towards their property. Ms. Pockalry indicated she planned on calling the Police Department every single day moving forward.

Mark White noted the Building Inspector, Town Planner, or Police Department have to observe the stone cutting or use of the hoop house building taking place each day for it to count against the Applicant. He felt this was an enormous waste of the Town's resources.

Lonnie Weil of 350 Burroughs Road asked, if the Applicant wanted to have a rock cutting business, why did they not simply construct another building appropriately and obtain the necessary approvals. Mr. Weil stated it would seem the Town would award the Applicant the permits they are seeking if they applied appropriately. Mr. Weil also asked how the stone cutting would occur at the property outdoors year round.

Mr. Markiewicz stated that when he visited the property in May he recommended the Applicant move the cutting operations inside the garage building. He continued on to note a Cease and Desist Order has been issued for the use of the hoop house building and it is now an enforcement issue. Mr. Markiewicz indicated the Planning Board will be looking into amending the penalty section the Zoning Bylaw. Mr. Levine stated the whole scenario has unfolded over the erection of the hoop house building and the Building Inspector has now made a determination the building needs a Variance or a Special Permit to be legally erected. He continued on to state there is no way for the Applicant to know how a Special Permit process would play out with the Zoning Board of Appeals. Mr. Levine indicated it has not been proven the Applicant is out of compliance with the Zoning Bylaw with regard to sound/noise.

Mr. Weil asked how the permitting process could ensure the stone slurry wastewater from the Applicant's operation would not pollute the surrounding area any further. Mr. Markiewicz stated the Applicant will need to obtain approvals from other Town boards and departments which will regulate this item. Mr. Pontoriero noted the purview of the Planning Board within the Site Plan Approval process is not black and white. He indicated the Planning Board had gone over a number of items at their last meeting to discuss which aspects of a Site Plan Approval application could be regulated by the Planning Board. In Mr. Pontoriero's opinion, it all starts with the hoop house building at the property and if the building is appropriate for cutting stone.

Mr. Weil asked how the stone slurry wastewater system would be a closed system if the Applicant would be cutting in the open air. Mr. Duchesneau indicated the Applicant would have to show the Building Inspector how the slurry wastewater would be handled appropriately before they could begin cutting outside. Larry White encouraged the Planning Board to bring forward further clarification of the Noise Bylaw to Town Meeting. Mark White asked if it was the Planning Board's position that Site Plan Approval is only required if a new building is erected, a building is expanded, or a new parking area is created. Mr. Duchesneau stated that upon reviewing the Site Plan Approval process in the Zoning Bylaw with the Building Inspector; yes, that is how the current Town Staff is interpreting this section of the Zoning Bylaw.

Mr. Markiewicz MADE a MOTION to continue the public hearing to the Planning Board's meeting on Monday, September 19, 2016 at 7:45 PM. Ms. Fillmore SECONDED the MOTION. All members voted in favor and Ms. Reip abstained.

### **Discussion Regarding Potential Zoning Bylaw Amendments**

#### *Over 55 Housing Overlay District or Amendment*

Mr. Duchesneau stated developer Roger Kanniard had requested this item be added to the Planning Board's agenda for consideration by the Board as a possible Zoning Bylaw amendment. The proposal would either amend the existing over 55, two-family dwelling Special Permit provision in the Zoning Bylaw or create a new overlay district which would allow for free standing, single-family, over 55 dwelling units to be constructed. Al Murphy, Chair of the Housing Board, stated Mr. Kanniard had spoken with the Housing Board about this proposal already and the Housing Board was supportive of this item being explored further. Mr. Murphy also noted that Boxborough2030 (the Town's Master Plan) calls for the creation of more senior housing units as well as starter homes in the community. Mr. Murphy indicated the only path for creating free standing, single-family, over 55 dwelling units currently is via a Variance from the Zoning Bylaw. Mr. Murphy stated he felt a zoning overlay district would be generally useful and could potentially be applied to the Town-owned 70-72 Stow Road property as well. Mr. Markiewicz suggested the bylaws of other towns be examined to see what they are doing with regard to this matter. There was general consensus the Planning Board would like to explore a possible Zoning Bylaw amendment of this nature.

#### *Section 9004 Penalty*

Mr. Markiewicz stated the Planning Board was going to examine this section of the Zoning Bylaw for possible amendments since the current penalties appeared to be relatively low. Mark White stated he felt \$100.00 a day for a fine is a very low amount and enforcing it consumes more Town resources than can be recouped by applying the fine. It was his opinion that every Zoning Bylaw had been written in the past because some person stepped over the line and regulations were put into place to remedy the situation.

Larry White asked for clarification on the previously discussed potential Zoning Bylaw amendment. He was curious to know if the Planning Board would be exploring possible new provisions for only over 55 housing or for starter homes as well. The Planning Board instructed Mr. Duchesneau to please examine potential amendments which would include both provisions for over 55 housing units as well as starter homes. Mr. Murphy stated if the proper research is conducted, a starter home or cluster housing bylaw could be palatable to Town Meeting.

#### *Section 6404(1) Noise*

Mr. Markiewicz stated that in the past the Planning Board has looked at potential changes to the existing bylaw and in doing so explored noise/sound bylaws in other communities. He noted this topic is a very challenging issue and is extremely difficult to enforce. However, Mr. Markiewicz stated the Planning Board will examine the existing noise bylaw to see if it can be improved. Mr. Pontoriero stated the Planning Board should have other discussions about this topic at future meetings. Mr. Markiewicz noted monitoring and enforcement of a noise bylaw is very difficult, and perhaps it could be regulated through certain levels at various times of day. Mark White stated he felt the biggest issue with the existing noise bylaw was the language which referred to

the one hour duration of the noise. He felt this should be interpreted to mean sound emitted for a cumulative time of one hour as opposed to continuously for one hour. Larry White noted he felt the Planning Board should ask Town Meeting to obtain more enforcement power from the Town. Mr. Markiewicz indicated the purview of the Planning Board as it pertained to various items and issues was discussed at the last Planning Board meeting.

With no further business, the meeting was adjourned at 9:15 PM on a MOTION by Mr. Markiewicz, SECONDED by Ms. Tang, with all members voting in favor.

On Behalf of the Boxborough Planning Board:



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Eduardo Pontoriero, Clerk