



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

**Meeting Minutes**  
**March 19, 2018**  
**7:30 PM**

**Sargent Memorial Library Meeting Room, 427 Massachusetts Avenue**

Members Present: John Markiewicz, Chair, Abby Reip, Clerk, Nancy Fillmore, Eduardo Pontoriero, and Hongbing Tang

Also Present: Adam Duchesneau, Town Planner and Jonathan Eichman, Town Counsel

The Chair called the meeting to order at 7:35 PM.

**Correspondence**

Mr. Duchesneau noted the Planning Board had received several pieces of correspondence since their last meeting. He stated the Planning Board had received a letter from Francie Nolde of 459 Sargent Road regarding the proposed Solar Energy Systems Bylaw, as well as comments from Town Counsel on the Planning Board's proposed Warrant Articles for the May 2018 Annual Town Meeting. Mr. Duchesneau indicated the Town Administrator had requested the Planning Board review Town Counsel's comments on the proposed Warrant Articles at the meeting. Mr. Duchesneau went on to state the other pieces of correspondence received pertained to the 700, 750, & 800 Massachusetts Avenue Site Plan Approval application and he recommended they be noted during that continued public hearing later in the meeting.

**Meeting Minutes of March 5, 2018**

Mr. Markiewicz MADE a MOTION to approve the minutes of March 5, 2018 as amended. Ms. Reip SECONDED the MOTION. All members voted in favor.

**Comments on Zoning Board of Appeals Applications**

*593 Massachusetts Avenue – Special Permit*

Mr. Duchesneau provided an overview of the application for a proposed Building Trade use (a construction company) in the Business Zoning District. Ms. Reip inquired about the specific nature of the use. She was curious to know if the space would be used as just an office for the business and a garage for trucks, or perhaps for other aspects of the use. Ms. Reip also asked about the number of trips which would be generated, the storage of trucks at the site, and if there would be repairs conducted on any vehicles or equipment. She also inquired about the number of employees the business would have at this location.

Mr. Markiewicz MADE a MOTION to forward Ms. Reip's comments on to the Zoning Board of Appeals regarding the proposed Building Trade use at 593 Massachusetts Avenue. Ms. Fillmore SECONDED the MOTION. All members voted in favor.

*493 Massachusetts Avenue – Variance*

Mr. Markiewicz recused himself and left the room, and Ms. Reip assumed the role of Acting Chair. Mr. Pontoriero expressed concern that granting a Variance for an LED electronic message board sign would set a precedent for others to erect LED signs throughout Boxborough. He asked if that was what the residents of Boxborough desired. Mr. Pontoriero wondered if he would feel comfortable approving this Variance request but denying the same request from another Applicant. He was also curious to know if there was another way the school district could disseminate their messages.

Ms. Fillmore noted there were no other LED signs in Boxborough.

Ms. Reip stated the school district uses the phone system and the internet to notify the public about school announcements. As she recalled, the approval of the original, existing sign seemed controversial, and commented that the town is not accustomed to this type of sign style, noting especially the top portion of the sign.

Ms. Tang stated LED signs are innovative, cutting edge technology. She noted the style of the school campus is modern and the sign would provide a convenient way to display information. Ms. Tang indicated she had concerns about the top part of the sign which she felt could be simplified.

Mr. Pontoriero expressed concerns about maintaining the character of the town, especially with regard to permitted signage.

Mr. Reip MADE a MOTION to forward the following comments on to the Zoning Board of Appeals regarding the 493 Massachusetts Avenue Variance application for the proposed installation of an LED electronic message board sign:

The Planning Board can see both sides of the proposal to install an LED electronic message board sign on the existing freestanding sign at 493 Massachusetts Avenue. On the one hand, the Planning Board is concerned that approving this Variance application would set a precedent to encourage other potential Applicants to seek approval for a similar type of electronic message board sign. Therefore, the Planning Board raises the following questions to the Zoning Board of Appeals. Is this something we want to see in Boxborough at this particular property or on other properties in town? If yes, would the Zoning Board of Appeals feel comfortable approving this application but perhaps denying other Variance applications for a similar type of sign at other properties?

The Planning Board also notes the proposed LED sign is a piece of cutting edge technology related to the educational use at the property and will help to convey information to those passing by on Route 111/Massachusetts Avenue. However, the Board feels the design of the top part of the sign could be greatly improved. The Planning Board feels the top portion of the sign should be reworked into a more simplified design with a flat or straight line across the top for a more contemporary feel.

Ms. Fillmore SECONDED the MOTION. All members voted in favor with Mr. Markiewicz recused from the vote.

At this time Mr. Markiewicz returned to the meeting and resumed his role as the Chair.

### **Correspondence from Town Counsel Regarding the Planning Board's Warrant Articles for the May 2018 Annual Town Meeting**

Mr. Duchesneau noted Mr. Eichman had provided a few comments on the Planning Board's proposed Warrant Articles for the upcoming Annual Town Meeting. The Town Administrator had requested the Planning Board review these comments as soon as possible to determine if they wanted to make any changes to the Warrant Articles.

#### *Article 1: Amend the Zoning Bylaw by Adding a Solar Energy Systems Bylaw*

Mr. Eichman noted MGL Chapter 40A provides a certain level of protection to the installation of Solar Energy Systems and recommended the Planning Board also include a reference to the definition for these facilities as stated in MGL Chapter 40A Section 1A.

Mr. Markiewicz MADE a MOTION to add the definition for Solar Energy Systems as defined under MGL Chapter 40A Section 1A to the proposed Solar Energy Systems Bylaw. Ms. Fillmore SECONDED the MOTION. Four members voted in favor and Ms. Reip abstained from the vote.

#### *Article 2: Amend the Zoning Bylaw by Adding a Definition for Gross Floor Area*

Mr. Markiewicz MADE a MOTION to accept the changes proposed by Town Counsel. Ms. Reip SECONDED the MOTION. All members voted in favor.

#### *Article 3: Amend Zoning Bylaw Section 4203 to Include Wording for Gross Floor Area*

Mr. Markiewicz MADE a MOTION to accept the changes proposed by Town Counsel. Ms. Reip SECONDED the MOTION. Four members voted in favor and Mr. Pontoriero abstained from the vote.

#### *Article 4: Amend Zoning Bylaw Section 7700 Temporary Moratorium on Recreational Marijuana Establishments to Extend the Temporary Moratorium Expiration Date*

Mr. Markiewicz MADE a MOTION to accept the changes proposed by Town Counsel. Mr. Pontoriero SECONDED the MOTION. All members voted in favor.

### **700, 750, & 800 Massachusetts Avenue – Site Plan Approval, Alternate Access Special Permit, and Stone Wall Alteration Application – Applicant Boxborough Town Center, LLC seeks to construct approximately 50 two-family dwellings (100 units of housing) reserved exclusively for elderly occupancy with an associated clubhouse with amenities, signage, private driveways, public water supply, wastewater treatment, drainage, and site grading**

At 8:05 PM, Mr. Markiewicz reopened the continued public hearing and read the legal notice into the record. Ms. Fillmore, a property owner within 300 feet of the subject property, recused herself from the hearing process and remained seated in the audience. Mr. Markiewicz inquired if anyone was recording the meeting and, if so, he asked them to identify themselves. Wes Fowlks of 155 Stow Road, Matt Mallio from The Beacon, and Evan Perry, on behalf of the Applicant, indicated they were recording the meeting. Mike Jeanson and John Lyons were

present on behalf of the owners and Applicants. Rich Harrington of Stamski & McNary, Inc., the Applicant's engineer, and Paul Haverty, the Applicant's attorney, were also present.

Mr. Duchesneau noted the correspondence the Planning Board had received since their last meeting which pertained to the application. Mr. Haverty stated he had no new information to present to the Planning Board.

In reviewing the most recent list of proposed draft conditions, Mr. Markiewicz stated the Police Chief could provide additional specifics related to Condition 34. Mr. Markiewicz also indicated he agreed that Condition 15 should include language which allows on street parking during construction of the project.

Mr. Pontoriero noted this would likely be a phased project and people will be living at the site while construction is still occurring. He felt this is something the Planning Board should take into consideration as they reviewed various proposed draft conditions. Mr. Pontoriero stated more information could be provided for Condition 16 and Condition 24 could be further clarified.

Mr. Markiewicz asked the Planning Board members if they had any questions for the Applicant regarding the letters which were received from March 1, 2018.

Mr. Markiewicz asked the Applicant to explain their objections to Condition 33. Mr. Haverty replied that site distance improvements would not be necessary until people would be accessing the site on a regular basis.

Mr. Pontoriero questioned the Applicant regarding Condition 4 and wanted to understand the Applicant's objection to the proposed construction hours. Mr. Haverty replied the proposed condition would make construction take longer and would cause the disturbance to the site to last longer.

Mr. Markiewicz requested the Applicant explain their comments on Condition 28. Mr. Haverty replied he felt the condition went beyond the Planning Board's authority under MGL Chapter 40A and added a minor violation could result in Certificates of Occupancy being rescinded.

Ms. Reip questioned the Applicant as to why they felt Condition 27 was unreasonable. Mr. Haverty replied the project could run into issues, which would prolong construction and the condition poses financing issues.

Mr. Markiewicz then opened up the hearing to comments from the public.

Robert Childs of 847 Burroughs Road stated there were no Town documents which talked about high-density cluster development in this zoning district in this location.

Cindy Markowitz of 99 Meadow Lane inquired about the result of a split vote (two members in favor and two against) by the Planning Board. Mr. Eichman stated this would constitute a denial of the application. Ms. Markowitz then raised concerns about the Planning Board issuing

conditional approval of the application as opposed to an outright denial. She stated conditional approval signaled approval of the project to the Applicant. Ms. Markowitz felt the project did not meet the legal requirements of the Town's Zoning Bylaw and the project should be denied. She stated conditional approval would allow the Applicant to pursue the necessary state and federal approvals. Ms. Markowitz noted the Town has not provided any comments to the Massachusetts Environmental Policy Act (MEPA) process and that an approval decision would not represent the interests of the Town.

Mr. Markiewicz asked the Applicant to address the Stow Road emergency access easement and its relationship to the zoning freeze. Mr. Haverty did not believe any additional approvals were required.

Richard Hilton of 394 Littlefield Road did not see any need nor contributions to the Town by the project. He felt the proposed project had nothing to do with what the citizens wanted in town. Mr. Hilton stated the only contribution the project would provide is a financial one and he expressed his opinion that there is a legal basis for a full-fledged denial by the Planning Board.

Carol Driscoll of 127 Stow Road expressed her concerns about the lights, noise, and odor associated with the Wastewater Treatment Facility and the Water Treatment building proposed for the project. She felt these issues would affect her enjoyment of her home. Ms. Driscoll added that usage of the Stow Road easement cannot be overburdened. She expressed her concern about the septic system pipe at Sheriff's Meadow potentially being damaged during construction. Ms. Driscoll noted that if the project required a myriad of waivers and conditions, she felt the project was probably inappropriate for the community.

Mr. Markiewicz requested the Applicant grant the Planning Board forty-five days from the close of the public hearing to issue a decision on the application. Mr. Haverty replied the Applicant would have provided sixty days if the time had been used to work on conditions for approval. However, two weeks had already passed since the Applicant had offered sixty days to the Planning Board, and therefore, the Applicant would only agree to provide forty-five days after the close of the public hearing for the Planning Board to issue their decision.

Heather Fleming of 140 Stow Road questioned the appeal process if an approval with conditions decision was issued by the Planning Board. Mr. Eichman provided synopses of possible scenarios.

Ray Gagnon of 133 Pine Hill Road stated the application is more than just one decision on one piece of property. He felt that if the Planning Board relinquished the center of town, there was no going back. Mr. Gagnon also felt the decision on this application could be a real turning point for the Town and he urged the Planning Board to deny the proposed project.

Nathan Soule of 180 Stow Road asked if an abutter could bring forth an appeal on a decision for the application. Mr. Eichman stated this was possible, but also noted the abutter would have to be aggrieved in the eyes of the court.

Mr. Markiewicz MADE a MOTION to close the public hearing. Mr. Pontoriero SECONDED the MOTION. All members voted in favor with Ms. Fillmore recused from the vote.

Mr. Duchesneau stated the deadline for the Planning Board to place a decision for the application on file with the Town Clerk was May 3, 2018.

At 8:57 PM, the Planning Board took a recess.

At 9:10 PM, the Planning Board reconvened their meeting.

**Executive Session: Pursuant to MGL Chapter 30A, Section 21(a)3, to discuss strategy with respect to the threat of imminent litigation concerning the 700, 750, & 800 Massachusetts Avenue Site Plan Approval and Stone Wall Alteration application**

Mr. Markiewicz MADE a MOTION to enter into Executive Session pursuant to MGL Chapter 30A, Section 21(a)3, to discuss strategy with respect to the threat of imminent litigation concerning the 700, 750, & 800 Massachusetts Avenue Site Plan Approval and Stone Wall Alteration application as the Chair declares discussion of this topic in an open session would be detrimental to the litigating position of the Town, and to return to open session solely for the purpose of adjourning the meeting. Mr. Pontoriero SECONDED the MOTION. Ms. Fillmore recused herself and left the room.

The Planning Board voted as follows to enter into Executive Session:

Mr. Markiewicz – Aye, Ms. Reip – Aye, Mr. Pontoriero – Aye, and Ms. Tang – Aye.

With no further business, the meeting was adjourned at 11:35 PM on a MOTION by Mr. Markiewicz, SECONDED by Mr. Pontoriero, with all members voting in favor and Ms. Fillmore absent from the vote.

On Behalf of the Boxborough Planning Board:



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Abby Reip, Clerk