

PLANNING BOARD MEETING – April 13, 2016

PRESENT: Jesse Forcier, Chairman; Mark Pease, Vice Chairman; Robert Donnelly; Philip Greene; George Nangle; Elizabeth Ware, Community Development Director; Michael Buxton, Public Works Director; Mark Hamel, Town Engineer and Lisa Wagner, Recording Secretary

Chairman Forcier opened the meeting at 7:00 p.m. in the Conference Room at Town Hall and the Pledge of Allegiance was recited.

MINUTES:

Meeting held on March 23, 2016: Mr. Greene motioned to approve. Mr. Nangle seconded. Motion passed unanimously.

155 BROADWAY ROAD, UNIT #9/KATHY PAPPAS/SPECIAL PERMIT FOR A FITNESS STUDIO/PUBLIC HEARING:

Chairman Forcier opened the hearing and read aloud the Legal Notice, which was advertised in the Lowell Sun on Wednesday, March 30, 2016 and again on Wednesday, April 6, 2016.

Kathy Pappas and Kathleen Zaharakes appeared before the Board seeking a special permit to operate a fitness studio that specializes in Barre-Tique personal training for all fitness levels. Ms. Zaharakes noted this fitness program is a franchise business, however; there are none in Dracut and the closest ones are located either in North Andover or Westford. Chairman Forcier stated the hours of operation as Monday through Thursday, 4:30 a.m. to 9:00 p.m.; Friday, 4:30 a.m. to 7:00 p.m.; Saturday, 6:00 a.m. to 12:00 p.m. and Sunday, 7:00 a.m. to 12:00 p.m. Mr. Donnelly mentioned the zoning is appropriate for the business and there is sufficient parking.

Chairman Forcier asked if anyone in attendance had a question or comment. Nobody came forward to speak for or against this proposed business.

Mr. Nangle motioned to close the public hearing. Mr. Pease seconded for discussion. Chairman Forcier indicated Ms. Ware submitted a letter with regards to the proposed fitness studio. Ms. Ware noted the signage should be accordance with the Zoning By-Law and all improvements should be made in accordance with the Massachusetts Building Code, as well as related Fire Codes. The applicants were agreeable to those items. Motion to close passed unanimously. Mr. Donnelly motioned to grant the special permit for a fitness studio. Mr. Greene seconded with the conditions of the Town Planner. Motion passed unanimously.

324 BROADWAY ROAD/TOP NOTCH HOMES/SPECIAL PERMIT FOR A MULTI-FAMILY DEVELOPMENT (15 3-UNIT TOWNHOUSES)/PUBLIC HEARING:

Chairman Forcier opened the hearing and read aloud the Legal Notice, which was advertised in the Lowell Sun on Wednesday, March 30, 2016 and again on Wednesday, April 6, 2016.

In attendance were Craig Marchionda, Project Engineer and Mike Rosati, Project Manager of Marchionda & Associates, Michael Wakeen of Top Notch Homes and Michael Kuenzler.

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Mr. Marchionda stated the hearing was re-advertised due to an abutter not being notified and indicated the applicant is seeking approval of a multi-family development consisting of fifteen (15), 3-unit townhouses, which will be accessed by a single roadway off of Broadway Road. The site is located in the R3 residential zone and is approximately 11 acres. Mr. Marchionda added the plan has been revised to address the concerns raised at the previous meeting. Chairman Forcier asked if the applicant appeared before the Conservation Commission. Mr. Marchionda confirmed a hearing was held by Conservation.

Chairman Forcier asked if anyone in attendance had a question or comment.

Helen Dunlap of 430 Marsh Hill Road, Chair of the Community Preservation Committee, who presented her case at the last hearing in seeking to preserve the house. At a CPC meeting last night, the Commission approved a placeholder for an article at the upcoming June Town Meeting to provide CPA historical funds for the moving and restoration of the house. Ms. Dunlap further mentioned the house has been deemed to have historical value, as indicated in a letter submitted by the Historical Commission and the preference is to have the house remain on the site at the current location or moved to the southwest corner.

In discussion, Ms. Ware noted the developer could get approximately the same number of units if the house remained on site situated on a 1/2-acre lot, which would need a ZBA variance, however; the developer does not want it to remain on the property. Chairman Forcier questioned who would take ownership of the home if it were moved and if CPC would be responsible for the ongoing maintenance. Ms. Ware believed that the proposal for Town Meeting would be to utilize CPC funds for moving and restoration of the house. Chairman Forcier inquired if the Town would have to take ownership. Ms. Ware stated there are a number of communities that allow CPC funds to be used for private property. Ms. Dunlap noted that CPC funds were used to preserve private land in the case of the Saja and Dumaresq farms. Mr. Nangle mentioned that the developer does not want the house to remain on the property and the Board can't force him to do that. Ms. Dunlap indicated they are still looking for a site to move it to. Mr. Donnelly added that the owner of the property has the right to decide what to do with the house, barn or land and the Board can't require him to do anything other than what he chooses to do. Chairman Forcier stated the developer has given a time frame and offered to contribute to moving the home if possible, which was a good will offer and not as a condition of the special permit.

Harvey Gagnon of 1483 Hildreth Street member of the Historical Commission and President of the Historical Society, who has a lifetime interest in the history of Dracut and would like to see the house remain on the site. Mr. Gagnon noted the Historical Commission puts in extensive effort to save Dracut's history.

Pamela Georgakakis of 7 Meadow Creek Drive has a serious concern for the privacy of her family with this proposed development. She feels her privacy will be impacted given the location of Units 1 to 3 directly at her backyard and with the decks overlooking her property.

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In addition, Mrs. Georgakakis noted in meeting with Mr. Wakeen, he stated the decks would be moved to the side of the units, but he did not provide a landscape plan and she's concerned with the number of trees that will be removed. Mr. Wakeen indicated a number of significant changes will be made to the proposed units abutting this resident. In working to address the abutter's concerns, Mr. Rosati noted a major landscape berm is being proposed, as well as the building being lowered and relocated closer to the street. The berm will be approximately 10-feet high and will have landscaping on top of it; so the decks will not overlook her backyard. Mr. Greene inquired how far forward the building is being moved. Mr. Rosati stated about 15-feet and the existing elevation is higher than her property, however; it will be taken down almost to the grade of her property. Ms. Ware asked about the elevation of 7 Meadow Creek Drive. Mr. Rosati did not take a topographical shot at this location, but based on the topography he estimates it to be about 185-feet, which is slightly higher than her backyard. Ms. Ware questioned whether the vegetation would be removed up to the property line with the regrading in this area. Mr. Rosati noted the vegetation is somewhat sparse in this area and providing the berm will benefit the resident more so than the existing trees.

Chairman Forcier asked for some indication or input on the discussions with the CPC. Mr. Wakeen stated there has been minimal discussion beyond the 60 day agreement, however; they're willing to work around that if a lot is found to move it to. Mr. Rosati noted the proposed construction sequence will begin away from the house and will allow more time if necessary. Mr. Kuenzler added 60 days was given in good will, but if CPC finds a location for the house and they need 75 or 80 or more days; they've shown a willingness to work with CPC. Ms. Ware mentioned a couple prospective locations being considered to move the house to and who should be contacted. Mr. Kuenzler stated he does not own the property yet and the Fox family is not interested in any attempts to save or move the home and he does not want to be tied to any conditions or unreasonable time table. Chairman Forcier noted there will not be any conditions in the special permit with regard to the house. Mr. Greene added the Board found out about the proposed development when the applicant came in for a hearing and the process has been followed, as required going back to the rezoning at Town Meeting last year.

In further discussion, Mr. Greene asked if the resident is aware of how high the proposed berm will be, the decks are being moved to the side and the units will be lower than her property. Mrs. Georgakakis confirmed the berm to be 10-feet and noted she has a 5-foot retaining wall in her backyard. Ms. Ware inquired if the buildings are 1-story. Mr. Wakeen stated there is an option for a 2nd floor, but those will face the new street. Mr. Georgakakis questioned if the yard will be right up to his property and if all the trees will be removed. Mr. Rosati stated the trees are being removed to build the landscape berm. Chairman Forcier noted the berm with shrubbery is more effective than any plantings. Mr. Pease added there will be a lot of site work and a substantial amount of earth moved around, which is difficult to visualize from the plan. Mr. Greene stated the plan can move forward based on the sequence of the proposed work and the developer can work with the Historical Society (should be Commission) on moving the house, as the Board can't put stipulations on it.

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Mr. Pease inquired about the drainage system if the house remains during construction. Mr. Rosati stated the ponds will not be 100%, but it can be adequately installed and the stormwater system maintained. Mr. Donnelly asked if the house has been inspected and determined that it can be moved. Mr. Rosati did not know. Mr. Pease asked if Mr. Hamel could evaluate the house. Mr. Hamel stated he could not. Chairman Forcier stated the owner would have to allow someone in, as the developer is not currently the owner. Ms. Ware noted the Building Inspector indicated he could inspect it. Mr. Kuenzler commented that once it is purchased; he is willing to do that, but at this time the Fox family is not interested.

Debbie Dewitt of Kenwood Road, member of the Housing Authority, as well as the CPC and who voiced her concerns about an adequate time frame to pursue saving the house given its historic value and feels the CPC should have an opportunity to find a location for it.

Mr. Nangle asked if Mr. Hamel has any issue with the plan. Mr. Hamel stated there has been some regrading and some minor changes to the drainage, which he asked if this was forwarded to Conservation. Mr. Rosati indicated he would contact Conservation and file a plan if necessary.

Hearing no further questions, Mr. Nangle motioned to close the public hearing. Mr. Greene seconded. Motion passed unanimously. Mr. Nangle motioned to grant the special permit for the multi-family development with the changes to the plan to include the berm abutting the property at 7 Meadow Creek Drive; with Units 1 to 3 located 15-feet closer to the roadway and with the decks to the side of the building. Mr. Greene seconded for discussion and noted the Board cannot take the house or barn into consideration. Mr. Pease mentioned the draft decision, which should be included. Chairman Forcier noted the applicant agreed to file the revised plan with the Conservation Commission. Ms. Ware added the optional 2nd floor should be towards the front. Mr. Wakeen asked not to restrict the entire development. Mr. Rosati felt the restriction applied only to Units 1, 2 & 3, which abut up to the property at 7 Meadow Creek Drive. The Board agreed with this finding. Mr. Donnelly stated Item #7 in the draft concerning the house and barn should be removed. For the record, Chairman Forcier reviewed the approval contingent on updating and revising the plan; contacting the Conservation Commission with regards to the drainage change and striking Item #7 from the decision. On the motion to approve, motion passed unanimously.

OLD BUSINESS:**Marsh Hill Road – “Fox Run II”/Draco Homes/Partial Bond Release & Partial Lot Release**

Mr. Nangle motioned to recommend a partial bond release of \$69,668.00 for Butternut Road. Mr. Greene seconded. Motion passed unanimously. Mr. Donnelly motioned to recommend a partial bond release of \$106,108.00 for Saddle Road. Mr. Greene seconded. Motion passed unanimously. Mr. Greene motioned to recommend posting a bond of \$106,491.15 for partial lot releases #12, 13, 32, 33, 34, 35, 44, 45, 46, 47, 48 & 49 on Old Pasture Road. Mr. Nangle seconded. Motion passed unanimously.

PLANNING BOARD MEETING – April 13, 2016**Emerson Avenue/ANR Plan/O’Neil v. Planning Board – Court Ruling**

Chairman Forcier stated Superior Court made a ruling in this case and Attorney Hall submitted a letter with regard to this matter. For the record, Chairman Forcier read Attorney Hall’s letter of April 11th, as follows:

On March 23, 2016, the Middlesex Superior Court ruled that “The Town of Dracut Planning Board and its members are directed to endorse the plaintiff’s plan “approval not required under the subdivision control law”. The Planning Board has to endorse the plan or the Planning Board and its members will be held in contempt of court. (Attorney Hall referred to the Case Law cited in the Court ruling.)

In light of what was presented at the court hearing, it is advisable for the Town to continue to monitor what goes on with this lot as Plaintiff’s counsel conceded, in response to the Court’s questions, that there was no other access to the Lowell “building lot” other than through Dracut. Additionally, Plaintiff’s counsel would not concede that he had to go to a Lowell or Dracut board in order to proceed with construction, despite the fact that he has to travel over Dracut land to access the property. The court indicated that Dracut’s claims may be ripe in the future, but presently under the ANR law, it did not have a right not to endorse the Plan as presented at this time.

In speaking with Attorney Hall, Ms. Ware noted the Court ruled in favor of the Plaintiff and the Board is encouraged to endorse the plan.

Mr. Greene motioned to approve the plan based on the Court decision. Mr. Nangle seconded for discussion. Mr. Pease was not familiar with the Case Law cited and will have to review it, as there is nothing in the ANR statute that talks about a lot being buildable, which the Court took into account. Ms. Ware agreed and added she advised the Board not to approve the plan, as it did not have the required frontage, as did Town Counsel. Hearing no further discussion, motion passed unanimously.

NEW BUSINESS:**15 Peabody Avenue/David Rowlett/Special Permit Submittal & To Request a Public Hearing for a Change of Use (Sign Shop to Building Trade Shop)**

Mr. Donnelly motioned to schedule a public hearing on May 11, 2016. Mr. Greene seconded. Motion passed unanimously.

ADJOURNMENT: Mr. Greene motioned to adjourn at 8:10 p.m. Mr. Nangle seconded. Motion passed unanimously.

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THE DRACUT PLANNING BOARD

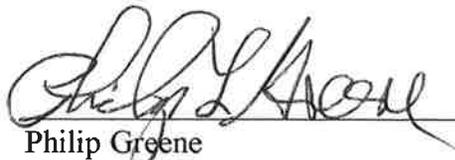
Jesse Forcier, Chairman



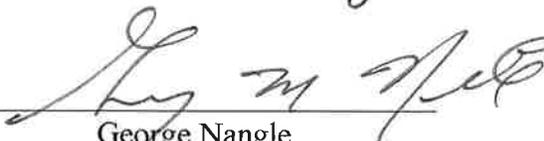
Mark Pease, Vice Chairman



Robert Donnelly



Philip Greene



George Nangle

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