



**Salisbury Planning Board**

**March 13, 2024**

**Salisbury Town Hall, 5 Beach Road Colchester Room & Remotely Via Zoom**

**7:00 PM**

**Meeting Minutes**

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**PB Members Present in Person:** Vice Chairperson, Gil Medeiros (**GM**), Clerk, Warren Worth (**WW**), John Schillizzi (**JS**),

**PB Members Present via Zoom:** Deb Rider (**DR**), and Alternate, Angelica Medina (**AM**)

**PB Members Absent:** Chairperson, John “Marty” Doggett (**JMD**)

**Also Present:** Director of Planning Lisa Pearson, and Planning Board Administrative Assistant, Ellie Cornoni

**GM** brought the meeting to order at 7:10 p.m. remotely via zoom. Announced, per opening meeting law, that the meeting was being recorded.

1. **New Business – 7:00 pm**
2. **Public Hearing - 7:10 pm**

**WW motioned to take agenda item “b” 159 Beach Road out of order in light of having Town Counsel present for the public hearing. JS seconded this motion. Roll call was taken, all members (5) voted in favor. Motion passed.**

- b. **159 Beach Road (Map 28, Lot 1):** Application for Definitive Subdivision - Construction of a 2-lot residential development containing 2 single-family dwellings with associated porous pavement driveways, utilities, landscaping and associated site work. **Applicant:** Larkin Real Estate Group, Inc (continued 2/28/24)
  - Attorney Don Borenstein, Johnson and Borenstein, LLC, spoke on behalf of the applicant.
    - He stated that in response to the Board previously requesting comments from Town Counsel, he submitted a letter with points of law and stated he is interested in hearing Town Counsel’s position on this matter.
  - Bill Hall, Civil Design Consultants, commented on the peer review comments the applicant team had received. He stated they had responded to the majority of those comments with the revised plans dated March 4, 2024. The largest changes were made on pages, C-4 and C-5 in response to the comments. He stated the designs of the houses, decks, windows would be issued at the time of the building permit and not necessarily on the definitive subdivision plan. He stated the biggest question is whether or not this plan can be a definitive subdivision and turned the conversation over to Town Counsel.
  - Attorney Robin Stein, KP Law, Town Counsel, stated it is her understanding that the plan being shown has more than the minimum frontage required under the zoning bylaw on a public way. The subdivision control law defines a subdivision but it excludes from that definition a plan where every lot within the track so divided has frontage on a public way. She stated, in her opinion, if you [the Board] find this is a plan that would be eligible for approval as an

ANR plan under MGL Chapter 41 §81P because it is a division of land where every lot being created has the frontage and access required, then it is not a subdivision. Then it would be, in her opinion, not eligible to be approved as a subdivision. It might be eligible to be approved as an ANR. That is presuming the beach commercial zoning still applies to their property as the benefit from their preliminary filing to freeze the zoning. For what it's worth, she stated, if the beach commercial zoning did not apply, it is her understanding that the minimum frontage requirement is 150 feet and she thinks the plan would could be denied based on the zoning violation of the smaller of the two lots not having the minimum frontage required in the R-2 Zoning district. She stated it does not appear to her in either instance that this is a plan that qualifies as a matter of law for the Board's approval under the subdivision control law.

- Attorney Borenstein stated to the Board that he has laid out their legal position with the letter submitted. He stated, the subdivision control law allows 3 tracks for plans. He stated it records the recording of plans, that this is the principal purpose of the control law. He stated in the 1950's the Commonwealth created this law to prevent property owners from chopping up their land willy-nilly and selling it. He stated, the subdivision control law allows 3 types of plans to be recorded; an 81-X plan that is in essence a boundary survey. This type of plan can be directly recorded provided the surveyor provide certification that no new lot lines are being created; the second avenue is what is commonly referred to as an ANR plan or a Form A plan, the ANR stands for Approval Not Required, this plan means you do not have to get approval through the subdivision control law process. Attorney Borenstein stated he does not believe there is anything under the law that prohibits the applicant proceeding with a definitive subdivision plan process. He stated in the MGL Chapter 41 §81P dealing with submission and dealings with plans not subject to subdivision control says, "Any person wishing to cause to be recorded a plan of land situated in a city or town in which the subdivision control law is in effect, who believes that his plan does not require approval under the subdivision control law, may submit his plan to the planning board of such city or town in the manner prescribed [as an ANR Plan]..." he stated in his opinion the law lays this out as an option. He referred to the letter he had submitted, stating the cited case laws state a parcel of land with adequate frontage on an existing way may be shown on either an ANR plan or definitive subdivision plan. He stated he also cited case law making it clear in the Commonwealth that filing a subdivision plan for purposes of freezing the zoning is perfectly allowable. This is a system for providing protection from zoning changes, this starts under § 6 under Chapter 40A. This states that the zoning freeze is enacted after a Preliminary Plan and subsequent Definitive Subdivision plan have been filed and the zoning freeze will stay with the parcel for 8 years. He stated he has noted before that this pan allows for the property owner to have a second option or other option for development of that land, but the intention of the applicant is not a consideration under the subdivision control law. He stated in response to one of Attorney Stein's last comments, the plan before the Board requires no waivers, meets all the subdivision regulations, meets all the applicable zoning and the applicant has responded reasonably to all the technical review items. He believes that this plan meets all the criteria to be approved and endorsed by the Planning Board.
- Attorney Stein stated that there is case law she can cite that backs up her opinions previously stated. She referred to the case of R.C Management Corp V. Planning Board of Southbridge [ 31 MASS Appeals Court 510 1991] The Appeals Court said, 'according to the statutory definition of a subdivision, if each lot in a tract of land has the frontage prescribed by the zoning bylaw on a public way, the development is not a subdivision within the subdivision control law and is not a subject for Board Approval'. She stated it is very clear in order to be eligible in her opinion, for a definitive subdivision plan, the applicant has to show a division that meets the definition of subdivision. It is also her opinion, if the Board finds that this land

does not meet the definition of a subdivision because it has frontage and access such that it could be eligible for an ANR endorsement, it is not subject for Board approval as a subdivision plan. She stated she has reviewed Attorney Borenstein's letter and she does not agree with him that you can simply call an ANR plan a subdivision to get a zoning freeze. She does not believe that is consistent with the language or law. She said in MGL Chapter 41 §81P, it referred to applicants who 'want to divide without needing subdivision approval that they *may* apply' has nothing to do with the definitive subdivision plan. They may divide by subdivision or may be divided by deed, there is case law on this as well.

- Chuck Shaw – 13 Old County Road – gave public comment with concerns regarding the plan.
- **GM** asked if the applicant had received approval from MassDOT for access onto Beach Road.
  - Bill Hall, responded there will not be access onto Beach Road. There is a large curb cut there presently that the plans show as being fixed with sidewalk. There will need to be permitting for the sidewalks but MassDOT likes to have an endorsed plan before beginning the permitting process.
  - Lisa Pearson asked Bill Hall to clarify if they are going to reconfigure the intersection of Beach and Old County roads.
  - Bill Hall responded, they are going to only do the sidewalks from Beach Road up to Old County Road.
- **GM** asked if they [the applicant team] had spoken to the DPW yet.
  - Bill Hall responded they had not. He stated they have not received comment from the DPW but added these types of conversations happen closer to building time.

**JS motioned to close the Public Hearing for the Definitive Subdivision Plan for 159 Beach Road. AM seconded this motion. Roll call was taken, all members (5) voted in favor. Motion passed.**

**JS motioned to deny the Definitive Subdivision Plan for 159 Beach Road on the basis of the plan not meeting zoning requirements and Town Counsel's opinion as such. DR seconded this motion. Roll call was taken, three members voted in favor, one abstention (WW). Motion passed.**

- a. **11 North End Boulevard (Map 33, Lot 8)** - Major Modification of a Site Plan Approval - Request by applicant for the addition of a fenced-in outdoor patio area with container bar, food truck(s), games and live music and/or a disc jockey (DJ), for seasonal use. Appx. 4,840 sq. ft. Total proposed occupancy not to exceed 200 persons. Ages 21+. No adult entertainment outdoors. **Applicant:** MJF Bowery Corp., d/b/a Ten's Show Club (continued: 1/10/24, 2/14/24, 2/28/24)

- Attorney Adam Costa, of Talerman, Mead and Costa, LLC, spoke on behalf of the applicant.
  - He gave a brief overview of the plan for the project.
  - He explained that the rationales for the continuances since January 10<sup>th</sup> were due to ongoing discussion with Town Staff and various other parties.
  - He stated that there were a few correspondences sent to the board during the course of the continuances. He gave an overview of the key points from them:
    - He stated the response dated February 7<sup>th</sup> addressed the neighbor's concern for noise associated with the stage. He stated the solution to this concern is to use a container stage that will be enclosed on all sides but the front and will be lined with sound panels. He stated they will do what they can with the design and position of the speakers. The idea is to reduce the sound to the neighbor's and adjacent properties. He stated they had also addressed lighting, noting they had

provided the photometric plan requested by the Board. He stated that the third item addressed in this letter was fencing and plantings. He stated they had provided examples of the types of fencing. He stated the Town's preference would be to have the plantings in the ground and not in planters.

- He stated the response dated February 13<sup>th</sup>, the chief purpose of this letter was to address the comments from the Town Engineer.
- He stated the response dated March 11<sup>th</sup> responds to Town Engineer's most recent review letter from February 20<sup>th</sup> and addresses the progress made by talking to the Director of Planning, Lisa Pearson. Attorney Costa went through the Town Engineers remaining comments. He stated that whilst preparing the beer garden area they will be sprucing up the existing landscaping outside of the scope of the plan in front of them. He stated that the National Grid lights issue has been rectified and the lights are off and will remain off. They are proposing 3 or 4 lights to be emergency lights in that back parking lot. They will turn off when the parking lot is clear.
- **WW** asked Attorney Costa what the final result of the egresses are.
  - Attorney Costa replied, stating there is a single means of entry and two forms of egress on the easterly side of the beer garden. He stated that the applicant would like to keep that means of egress near the turf area even if the other egress is made larger.
  - **WW** stated he would like to see the egress widened for safety reasons. He also commended the applicant team for their willingness to appease the abutter's concerns given the commercial zoning.
- **GM** asked if the ABCC [Alcoholic Beverages Control Commission] has approved the license.
  - Robert DePesa, the applicant, stated the Board of Selectmen were waiting for Planning Board approval to send the license in to the commission.
- Mike Fay – 233 Beach Road – gave public comment with concerns of noise and traffic.
- Lisa Pearson asked to clarify the signage and traffic flow for the entrance on North End Boulevard.
  - Robert DePesa stated that the entrance being discussed is actually a part of the abutting parcel. He recommended putting a sign up in that area that says 'Do Not Enter'. The deliveries come in through the bigger entrance.
  - Lisa Pearson recommended to the Board she and the Town Engineer perform a site visit and check the entrance and work out what the signage would say and/or if the applicant can put up signage seeing as you cannot put up signs on someone else's property.

**JS motioned to continue the Major Modification of a Site Plan Approval for 11 North End Boulevard to the March 27, 2024 Planning Board meeting. WW seconded this motion. Roll call was taken, all members (5) voted in favor. Motion passed.**

- c. **201 Elm Street (map 9, Lots 46 & 67):** Major Modification of a Site Plan Approval – Request by applicant for the addition and size change of storage buildings. **Applicant:** Arakelian Family, LLC
- Bruce Arakelian, the Applicant, spoke about the project. He gave an overview of what the changes to the original site plan are. He stated there is a change in the dimensions of the buildings. He stated he made the building smaller to add another building. He stated the square footage of the site is being reduced by about 500 sq-ft.

- **WW** asked if any of the units are going to be climate controlled.
  - Bruce Arakelian responded saying he does not believe so except for maybe the front unit that will house the office.
- **WW** asked if all the utilities will be in the office.
  - Bruce Arakelian stated he believes so and noted his goal would be to have the facility run by solar energy.
- **WW** asked about signage directing traffic to different buildings as well as for the facility itself.
  - Bruce Arakelian stated he is willing to install a sign if need be for unit numbers. He said the sign for the facility will be near the cinema entrance. He stated he would like to get it moved closer to the Winner's Circle somehow.
- **DR** confirmed the plan had been through the Conservation Commission.
  - Bruce Arakelian stated it had been through and was accepted by Conservation Commission.
- **GM** asked if there are going to be bollards around the building.
  - Bruce Arakelian stated that there will be bollards around all the buildings.
- **GM** asked if the applicant will break up the scenery with landscaping.
  - Bruce Arakelian stated that he could entertain that but there is a lot of landscaping going on other places of the site.
- Lisa Pearson stated that there are safety concerns with putting that extra building in the access area with concerns about patron parking volumes for the existing two businesses.
  - Bruce Arakelian stated the directional and stop signs required are up.
- **WW** suggested adding a decorative and informative sign on the side of the new building.

**JS motioned to close the public hearing for the Major Modification to the Site Plan Approval for 201 Elm Street. WW seconded this motion. Roll call was taken, all members (5) voted in favor. Motion passed.**

**WW motioned to approve the Major Modification to the Site Plan Approval for 201 Elm Street with the stipulation a sign be installed on the additional building. JS seconded this motion. Roll call was taken, all members (5) voted in favor. Motion passed.**

### **3. Other Business**

#### **b. Meeting Minutes : 7/13/22 , 2/28/24**

- i. **GM** stated these will be discussed at the next Planning Board meeting.

#### **c. Update on Open Space and Recreation Plan**

- i. Lisa Pearson gave an update on the Open Space and Recreation Plan. She stated staff has been working with MVPC to gather updated maps and working with other departments and commissions in order to get final approval hopefully in April.

#### **d. Update on MBTA 3A Zoning By-law**

- i. Lisa Pearson gave an update on the MBTA 3A Zoning By-law. She stated there have been community meetings and will be a few more meetings. The first public hearing with the

Planning Board will be on March 27, 2024. They are gearing to get this to Spring Town Meeting.

4. **Old Business**

5. **Correspondence**

- b. Citizen Planner Training Collaborative (CPTC) Annual Conference, Saturday, March 16, 2024 at Holy Cross College, Worcester MA – registration closes March 14, 2024

6. **Adjournment**

**JS motioned to adjourn. AM seconded this motion. Roll call was taken, all members (5) voted in favor. Motion passed.**

**Meeting adjourned 8:40 pm**

**\* Documents provided at the meeting are on file in the Planning Office**

**Minutes approved by:** \_\_\_\_\_

**Date:** 4/1/24