



BELLINGHAM ZONING BOARD

10 MECHANIC STREET
BELLINGHAM, MASSACHUSETTS 02019

Minutes of Meeting
Thursday, October 3, 2019

MEMBERS PRESENT:

Brian Wright (BW)- Chairman
James Dunlea (JD) – Vice Chairman
Arturo Paturzo (AP) – Member
Brian T. Salisbury (BTS) – Member
Peter Gabrielle (PG) – Member
Joseph Flanagan (JF) – Alternate Member

ALSO PRESENT:

James S. Kupfer, Town Planner and Zoning Compliance Officer
Laura Renaud, Clerk

ABSENT:

James Jeschke (JJ) – Alternate Member

The Chairman opened the Zoning Board of Appeals meeting at 7:00 pm.

Lakeview Estates Comprehensive Permit Continuation:

Prior to the opening of the hearing, Chairman Wright recused himself.

Vice Chairman James Dunlea sat in as Chairman and began the proceedings on the continuation of Lakeview Estates Comprehensive Permit.

Members Present:

- James Dunlea, Brian Salisbury, Arturo Paturzo, and Peter Gabrielle.

The Applicant Representatives were:

- Bob Poxon, Site Engineer, Guerriere & Halnon
- South Center Realty Attorney

Vice Chairman Dunlea indicated that there 3 outstanding items:

1. Germination of the slope
2. Completion of the basin
3. Contract for paving for roadway –contract is commencing on 10/18/19

The applicant communicated that the retaining wall will be delivered within the next week. It takes a couple days to build and will be done in time to complete the paving. Michael Harrington, Site Supervisor was not in attendance to give a construction update.

Grass germination is growing and there are no signs of erosion (photo provided)
There is no standing water in the basin which means it is functioning.

Member Gabrielle was on site and confirmed that the comments are accurate.

The board recommended that the Building Commissioner, Timothy Aicardi allow continuation of the frame and foundation that were already in progress and poured. There are still 3 open foundation holes, 5 active Building Permits and 4 Building Permits that were submitted and are on hold. Building Commissioner noted that the conditions were being met, but there are safety issues leaving the foundations open.

On a motion made by Member Dunlea and seconded by Member Paturzo the board voted unanimously to allow the applicant to continue with the foundation holes, and the 5 active building permits. The 4 permits submitted and held will continue to be on hold until the paving occurs.

On a motion made by Member Dunlea and seconded by Member Paturzo, the Zoning Board of Appeals voted unanimously to continue the hearing for Lakeview Estates to Thursday, November 7, 2019 at 7:00 pm.

Burton Woods off Sunken Meadow Road -Lot 2 Continuation:

- Hidden Meadow Road II Realty Trust – Edward Gately Trustee
Comprehensive Permit Request 40B

Members Present:

- Brian Wright, Brian Salisbury, James Dunlea, Artuto Paturzo, and Peter Gabrielle.

The Chairman opened the continuation hearing for Burton Woods.

The applicant brought the board up to date. The trees were chosen per request of the discussion with the abutters. The retaining wall is shown. Conservation Commission is interested in the jurisdictional areas. A site walk will be scheduled. The Conservation Commission are looking the State standards which are relevant to this application. The board would like to leave the hearing open until the Conservation Commission conducts the site walk. The applicant has requested a waiver from the local bylaw. The consultant highlighted some of the specific items that would be waived. The Conservation Commission did outline some critical issues which have been addressed by the applicant. A waiver is requested for the structures within the 50-foot buffer. The applicant communicated that there will be a 6- foot black chain link fence around the detention basin for maintenance and safety.

Public Input:

Attorney Hill was present representing the Franklin neighbors. Attorney Hill provided a letter regarding the site distance issue. PSC had asked for the collection data.

The applicant responded that they are complying and will do whatever Peer Review PSC is recommending. PSC suggested clearing some of the vegetation, putting in a stop line and speed limit signs. The applicant responded that the speed analysis is in compliance but are willing to put in signage if requested. The applicant will also prune the specified trees. The trees are in Franklin but is a Bellingham property owner, so the applicant communicated that they cannot go on private property. The applicant responded that this is recommended but not required and the applicant meets the critical site standards. The board will get clarification from PSC on this issue.

Attorney Hill disagrees with the applicant. The intersection at Pine and Sunken Meadow is 225 feet. The applicant does not comply since it is only 209 feet. It effects his clients as there is one way in and out. The applicant is adding 28 more homes. The ZBA can approve a 40B permit but Franklin needs to also approve also as it is the sole means of access. Franklin needs conditional approval. The applicant should have gone to Franklin first. The applicant needs consent of the lot owners on Sunken Meadow Road, that is a provision of Sub-Division Control Law. This developer has not reached out to anyone in Sunken Meadow Road. These are 2 legal hurdles that need to be met. In 2007, it was in land court. The Rules and Regulations are strict. The applicant is asking the board to issue in the decision "subject to Franklin approvals."

Town Counsel Kwesell reminded the Zoning Board that the applicant is before them for a 40B permit and that is what the board needs to make a decision on. It is not a subdivision. It was suggested that the board make findings.

Public Questions:

The following questions were asked:

- There are many questions in regard to the access. It is a private road.
- Does the applicant go to the Town of Franklin or go to the residents?
- How will the applicant construct without access?

The board responded that the applicant has their own lot and have the right to access their lot. It is not a public way. It is a private issue. The right of access would have to be given by the Town of Franklin. The Town of Franklin must hear what is in front of them for the 40B permit request.

Town Counsel Kwesell explained the applicant has proved site control to MA Housing. The overburdening is a private matter. The Bellingham Zoning Board of Appeals cannot control what they do in the Town of Franklin. It is not this boards issue to determine. Your jurisdiction is in the Town of Bellingham and if you condition you would be going outside that jurisdiction. There may be obstacles but that is for the Town of Franklin to resolve.

The applicant stated they are comfortable with their application and will do what is requested by PSC engineers.

Planner/Zoning Officer Kupfer re-iterated that this board should determine if there is adequate access. The frontage is shown on the plan.

Attorney Hill stated this is a public matter.

The applicant responded it is their burden to prove and feel they have adequate access.

The board questioned the appeal process and Town Counsel Kwezell explained if the permit is granted and there are conditions the applicant doesn't like they can appeal it to MA Housing. If there are conditions the abutter does not like they can appeal it to Superior Court or the Housing Appeals Committee.

Town Counsel Kwezell informed all that there is a site project eligibility letter which MA Housing determined the applicant has site control. If they don't have legal access, they can't build under the 40B. If the applicant starts digging up the road, then the Town of Franklin would be responsible for enforcement.

Planner/Zoning Officer Kupfer informed the Zoning Board that the Conservation Commission may have some minor tweaks to the plan, so a revised set may come in before the next meeting.

The applicant requested the board move forward with the draft decision.
Planning/Zoning Officer Kupfer will begin writing a draft decision.

On a motion made by Member Dunlea and seconded by Member Paturzo the board voted unanimously to allow Planner/Zoning Officer Kupfer to draft a decision.

On a motion made by Member Dunlea and seconded by Member Paturzo the board voted unanimously to allow the applicant to continue to November 7, 2019 at 7:00 PM.

MINUTES:

September 5, 2019:

The September 5, 2019 minutes will be tabled until the November meeting.

The meeting adjourned at 9:00 PM.

Minutes Accepted on NOV 7, 2019
(Date)

James A. Benard
Prepared by:

Brian Wright
Brian Wright

Arturo Paturzo
Arturo Paturzo

Peter Gabrielle
Peter Gabrielle

James Dunlea
James Dunlea

Brian Salisbury
Brian Salisbury