Minutes of the Planning Board Meeting of August 10, 2021

Pursuant to a notice and agenda filed with the Town Clerk, the Planning Board met at 5:30 p.m. on August 10, 2021 virtually online via https://zoom.us. The meeting was recorded and will be available on the Minuteman Media Network.

At 5:30 p.m., Chairman Flint called the meeting to order and said that the Board will vote to go into Executive Session to discuss strategy with respect to ongoing litigation regarding Symes Development & Permitting LLC v. Town of Concord et al., as an open meeting may have a detrimental effect on the litigating position of the Town and that the Board will return to open meeting after the adjournment of Executive Session and that the first agenda item in open session is scheduled for 7 p.m. Mr. Flint asked for a roll call of the Board members present. Present were Ms. Ferguson, Mr. Bosdet, Mr. Boardman, Ms. Miller, Ms. Orvedal, Ms. McEneaney, and Mr. Flint.

Mr. Flint moved that the Board go into executive session for the reason stated above. Mr. Bosdet seconded. The roll call vote was Ms. McEneaney, yes; Mr. Boardman, yes; Ms. Orvedal, yes; Ms. Ferguson, yes, Mr. Bosdet, yes; Ms. Miller, yes, and Mr. Flint, yes.

The Board exited the meeting to join the Executive Session.

At 7:00 p.m., the Board and Town Planner Hughes returned. Mr. Flint reconvened the open session of the meeting.

Revised West Concord Design Guideline Preamble Discussion with WCAC

Three members of the West Concord Advisory Committee (WCAC) were present to discuss with the Board the new West Concord Junction Preamble for the existing West Concord Design Guidelines. Present were Susan Mlodozeniec, Ann Sussman, and Chair Amy Kaiser. The development of the Preamble was a collaborative effort between WCAC and the West Concord Junction Cultural Council. The Board expressed appreciation for the work done to develop the Preamble. After discussion, Mr. Flint moved that the Planning Board include the Preamble in the West Concord Design Guidelines. Ms. Ferguson seconded. All voted in favor. The roll call vote was Mr. Bosdet, yes; Ms. Ferguson, yes; Ms. Miller, yes; Ms. McEneaney, yes; Ms. Orvedal, yes; Mr. Boardman, yes; and Mr. Flint, yes.

Site Plan Review, Concord Children’s Center

Application of Concord’s Children’s Center under Section 11.8.7 of the Zoning Bylaw to convert the existing single-family dwelling to a childcare center with reduced parking, construct a 7,063 s.f. addition and make related site improvements (parking lot, subsurface stormwater drainage and landscaping) at 250 Old Bedford Road, Parcel 4220. The Applicant requested a continuance without discussion to the August 24, 2021 meeting.

Ms. Ferguson moved that the Board continue, without discussion, the application of Concord’s Children’s Center under Section 11.8.7 of the Zoning Bylaw at 250 Old Bedford Road, Parcel
4220 to 7:30 p.m. on August 24, 2021 and accept the grant of a time extension to August 27, 2021 to file the Board’s decision with the Town Clerk. Mr. Bosdet seconded. All voted in favor. The roll call vote was Ms. Miller, yes; Mr. Boardman, yes; Ms. McEneaney, yes; Ms. Ferguson, yes; Ms. Orvedal, yes; Mr. Bosdet, yes; and Mr. Flint, yes.

Minutes

The Board reviewed and amended the July 13, 2021 draft minutes. Mr. Boardman moved, and Mr. Flint seconded, that the Board approve the minutes as amended. All voted in favor. The roll call vote was Mr. Bosdet, yes; Ms. Ferguson, yes; Ms. Miller, yes; Mr. Boardman, yes; Ms. Orvedal, yes; Ms. McEneaney, yes; and Mr. Flint, yes.

The Board reviewed the July 27, 2021 draft minutes. Mr. Flint moved, and Mr. Bosdet seconded, that the Board approve the minutes as written. All voted in favor. The roll call vote was Mr. Bosdet, yes; Ms. Ferguson, yes; Mr. Boardman, yes; Ms. Miller, yes; Ms. McEneaney, yes; Ms. Orvedal, yes; and Mr. Flint, yes.

Planning Board Liaison/Town Planner Updates

Mr. Boardman reported that he attended WCAC’s presentation of the Preamble. Also, discussed at that meeting was discontent with the lack of maintenance of the Town’s portion of the commuter parking area in West Concord. A letter was sent to Concord Public Works. Mr. Boardman will update the Board as it unfolds.

Town Planner Hughes reported that the Concord’s new Land Manager, Will Holden, and Liz McKinley of Davey Tree, the Town’s reviewing agent, will attend a future Planning Board meeting to discuss their suggestions for potential revisions to the Town’s Tree Preservation Bylaw Rules and Regulations. Ms. Hughes explained that revisions to the Rules and Regulations would require that the Planning Board hold a noticed Public Hearing and vote on adoption of amendments.

Ms. Hughes reported that she and the Town’s consultant will attend the Natural Resources Commission meeting on August 11th where the Assabet River Pedestrian Bridge request for determination will be discussed. She explained that the 25% design phase was funded by a combination of Community Preservation Act funds and a MA Trails grant, which accounts for approximately 75% of the work, and that the Town has applied to the State to be included for Transportation Improvement Program (TIP). Funding for further project development and construction for the final phase will be sought.

Ms. Hughes reported that she will meet soon with the Building Commissioner, Ray Matte, to get feedback on potential Zoning Bylaw amendments.

Ms. Orvedal asked about the status of the Town’s hiring of a Director of Sustainability. Ms. Hughes said that, although she is not involved in that process, she would check and report back.

At 7:48 p.m., the Board took a short break until 8 p.m.
At 8:00 p.m., in accordance with provisions of M.G.L. Ch. 41, Sect. 81-T and the Town of Concord Subdivision Rules and Regulations, Chairman Flint opened the public hearing on the Board’s review of the Definitive Subdivision Plan application of Stephan Marsh for a minor modification to allow Lot 2A to be added to McCaller Lane (formerly Keuka Road) in the existing Hosmer Meadow Subdivision (Parcel 3837).

The Board considered the Planner’s Report dated 8/10/21.

The applicant, Steven Marsh, was present. Mr. Marsh stated that the minor modification is proposed to access the lot from the previously approved Definitive Subdivision Plan. Mr. Marsh stated that the lot is a “grandfathered lot” and that the applicant is requesting access off the existing paved subdivision road to access the lot.

Mr. Flint asked Town Planner Hughes to clarify the applicant’s request in light of the restriction on the existing 4-lot Hosmer Meadow Subdivision that no additional lots be created.

Ms. Hughes explained that the Hosmer Meadow Subdivision decision limited the subdivision to the access for four lots off (what is now known as) McCaller Lane and that to add a fifth lot requires a modification to the subdivision plan to make sure that emergency vehicle access and stormwater drainage is adequate. She said that is it typical for the applicant to run through a presentation of the proposed plan and application and explain it to the Board.

Ms. Ferguson asked Mr. Flint to clarify his question. Mr. Flint said that he asked for clarification because he wants to ensure that the rational for the restriction (of four lots) put in place by a prior Board’s decision is looked at by this Board in their review of the modification request and whether there are any prerequisites which need to be met in determining a fifth lot.

Mr. Marsh went over the rationale for the plan modification request contained in his letter dated 5/3/21 included in the application.

Town Planner Hughes shared the screen so that the Board could view the submitted plan. She pointed out that area where the applicant proposes to extend a driveway off the end of the existing roadway (McCaller Lane) to access the lot. She pointed out the existing paper road, the existing paved roadway shown on the plan, as well as the T-shaped turnaround and no parking area in the existing subdivision. She pointed out the location where the Fire Dept. has requested additional signage and the existing area where fire trucks could turn around, if needed. She referred to the recommended conditions contained in the Planner’s Report.

The Town Planner’s report states that the Applicant is proposing a modification Condition #2 of the Hosmer Meadows Definitive Subdivision. This Condition that limits access from the improved roadway to four lots until the Board grants a Definitive Subdivision Modification to extend the road and improve the stormwater drainage and a modification to the approved Subdivision Plan for the creation of a fifth building lot at the terminus of the road.
The Board’s Subdivision Decision limited the number of lots that can be served off McCaller Lane (formerly Keuka Road) to four lots in part because of the waivers to the Subdivision Rules and Regulations to allow a modified T-turnaround at the end of the road instead of making the road go all the way through to Main Street and the stormwater drainage report did not take into consideration a fifth building.

Mr. Flint referred to the Planner’s Report and asked Town Planner Hughes to clarify the comments about the stormwater management. Ms. Hughes explained that the applicant submitted a stormwater drainage report as part of the application and that report was reviewed by the Engineering Division of Concord Public Works and, in an August 9, 2021 memo, the Engineering Division did not raise any issues and concerns and recommends four conditions of approval.

Mr. Flint questioned the amount of proposed fill and impacts to the existing groundwater levels. Mr. Marsh replied that the driveway is proposed above the groundwater level.

Mr. Flint asked for questions from the Board.

Ms. Ferguson recalled that both she and Mr. Flint were on the Board when the Hosmer Meadow Subdivision was approved. She recalled that the discussions included concerns about flooding occurrences and assumed that those concern had a bearing on the number of lots that were allowed.

Mr. Flint recalled that it was the applicant of the Hosmer Meadows Subdivision that elected to limit it to four lots and the extent to the development of the road. He recalled that there were questions about the impacts the development might have on water (flooding) in that area.

Mr. Flint said that he reviewed the existing subdivision decision and the Town Planner’s Report and that he was trying to ascertain exactly what requirements need to be met by the applicant now.

Mr. Marsh clarified that the Lot 2 (Parcel 3837) was not part of the Hosmer Meadow Subdivision. He explained that Lot 2 is under separate ownership from the developer of the existing subdivision, [which is Keuka Road LLC]. He said that Lot 2 just happens to be at the end of the subdivision roadway and that when Hosmer Meadows was being developed there was an arrangement between the owner of Lot 2 and Keuka Road LLC to use their subdivision road and they stubbed the utilities too. As part of the agreement, the owners of Lot 2 gave an easement [to Keuka Road LLC] to use 20,000 square feet of land to accommodate stormwater runoff for their project. He explained that the arrangement was in lieu of payment and described it as “we’ll give you this land if you provide us with the adequate frontage and stub out our utilities so we’re [Lot 2] in compliance with the Zoning requirements, even though he [Mr. Marsh] would argue that we are a grandfathered lot and we do have the requisite amount of frontage in land area.” Mr. Marsh stated that he had a lengthy discussion with the Building Commissioner and under M.G.L. Ch. 48, Section 6, Lot 2 is a grandfathered lot. He said that it
was decided to go through the application process however because this is a minor modification, and the original road was not built to the standards back in 1913.

Mr. Boardman had a question about the existing law and the 1913 plan. He said that Lot 2 is comprised of eleven of the 1913 lots combined as one property and asked for clarification that the eleven tiny lots could not be developed. Mr. Marsh opined what could be done, in theory, with the “grandfathered” lot.

Ms. Hughes clarified that Mr. Marsh does not have eleven potential lots, that all of those lots are now under common ownership, so they are combined for zoning purposes, so even if all were upland, they could only be divided as they meet the requirements of the Zoning Bylaw. Additionally, she noted that because there are such extensive wetlands present, one could not divide the lots in a manner where each lot had 50% upland. She explained that the area that has been devoted to the stormwater retention basin leaves a very limited amount of upland space for the entire of Lot 2, so there is no ability to further divide this lot into a building lot because there no further upland available.

Ms. Ferguson asked for clarification that although the applicant is talking about this being a separate subdivision, the application is actually a modification to the existing subdivision?

Mr. Marsh replied that is correct.

Town Planner Hughes further explained that it is not a separate application, it is a modification to the previously approved subdivision [Hosmer Meadows] since the right-of-way has already been laid out and a modification is required to allow the fifth lot.

Mr. Flint asked for public comment.

Attorney Kevin Geaney, representing Keuka Road LLC (the developer of Hosmer Meadow) said that he wanted to clarify a few things. He stated that Keuka Road LLC is not participating in this application. He opined that this application should be treated as a separate application and referred to the approval by the Board of the Hosmer Meadow subdivision. He said that the subdivision decision contained language that access from the improved roadway shall be limited to four lots until the Planning Board grants a Definitive Subdivision to extend the road and improve stormwater drainage.

Mr. Geaney recalled that the Hosmer Meadow subdivision’s approval was subject to judicial appeal, which took a number of years, and that, while it [the appeal] was of questionable validity, nevertheless [Keuka Road LLC] prevailed.

Mr. Flint asked Town Planner Hughes if there is a way for an applicant who has been granted definitive subdivision plan approval to oppose a subsequent application for modification to the plan by another party. Ms. Hughes said she was not able to answer that type of question.
Mr. Flint summarized that it was his understanding that, based on the information provided to the Board, it is within the Board’s authority to modify an (existing, approved) subdivision plan by whomever makes an application for a property abutting the original subdivision.

Town Planner Hughes said that was her understanding as well but suggested that the Board could request clarification from Town Council.

Mr. Flint reflected further on the intent of the language in Condition #2 in the Hosmer Meadow Subdivision decision.

Ms. McEneaney questioned how one party can later modify another party’s plan for their property. Town Planner Hughes explained that it is tied to the road right of way and layout. She noted that this road right-of-way has already been laid out and the Applicant is not seeking any other changes to the roadway other than extending a driveway off the current pavement and the reason this application is a modification. Ms. Hughes gave an example of Monsen Rd. where a developer purchased land at the end of the road, beyond the road right-of-way. He had to file a new Definitive Subdivision application to layout and extend the road right-of-way.

Mr. Boardman also asked for clarification on the intent of the applicant’s request. Mr. Flint and Ms. Hughes explained the circumstances are that the utilities, stormwater drainage, and pavement have been completed up to this lot and the applicant is just seeking to connect to that. Ms. Hughes added that the Applicant is not proposing any modification to the original subdivision road or stormwater drainage.

Mr. Flint asked the Board to the consider various conditions contained in the aforementioned Planner’s Report.

Mr. Geaney clarified that Keuka Road LLC sought to develop four lots because that is the extent of the allowable development based on the land that they owned.

Ms. Ferguson said that she wanted to state for the record her concerns that [granting this modification] allows development of an area that shouldn’t be developed due to potential harm to the existing environment there [seasonal groundwater flooding].

Mr. Flint acknowledged Ms. Ferguson concerns but said that the findings of Town staff suggests that the applicant has met the requirements for managing stormwater. Mr. Flint said that the Board is evaluating the application on the criteria of the Subdivision Control Law.

Mr. Boardman moved, and Mr. Bosdet seconded, that the Board, pursuant to M.G.L Ch. 41, Section 81 and the Planning Board Subdivision Rules & Regulations, grant the Definitive Subdivision Plan modification of Stephan Marsh for a minor modification to allow Lot 2A to be added to McCaller Lane (formerly Keuka Road) in the existing Hosmer Meadow Subdivision (Parcel 3837) based on the findings and recommended conditions of approval as outlined in the Town Planner’s Report. The roll call vote was Ms. Ferguson, abstained; Mr. Boardman, yes; Mr. Bosdet, yes; Ms. McEneaney, yes; Ms. Miller, yes; Ms. Orvedal, yes; and Mr. Flint, yes. The motion was approved by a majority.
**General Public Comment**

None given.

The Board decided to hold the August 24th meeting remotely.

The meeting adjourned at 8:47 p.m.

Documents presented which are on file in the Planning Division Office at 141 Keyes Road, Concord, MA:

- Town Planner’s agenda memorandum dated 8/6/21
- Town Planner’s Report dated 8/10/21 for Definitive Plan Modification McCaller Lane
- West Concord Design Guidelines Preamble dated 7/9/21

Respectfully submitted,

Kate McEneaney, Clerk

Minutes approved on: 8/24/21