



**MINUTES OF REGULAR PLANNING BOARD MEETING  
June 1, 2015  
Planning Board's Meeting Room #315  
Town Office Building, 400 Slocum Road, Dartmouth, MA**

**Planning Board**

Mr. Joel Avila, Chairman  
Mr. Joseph Toomey, Vice Chairman  
Mrs. Lorri-Ann Miller, Clerk  
Mr. John V. Sousa  
Mr. Kevin A. Melo, absent with cause

**Planning Staff**

Mr. John Hansen, Jr., Planning Director

**Appointment**

- (1) **6:45 P.M. Joint Meeting with the Select Board in Room #304**  
RE: Article 9 STM
- Discontinuance of a Portion of Leonard Avenue

**Select Board**

Shawn McDonald, Chairman	Kelli Martin Taglianetti
Stanley Mickelson, Vice-Chairman	Frank Gracie III

**Also Present:**

John Janiak, Esq., Representing Eye-Man Limited Partnership  
Richard Rheume, P.E., Prime Engineering  
Brian Cruise, Esq., Town Counsel's Associate  
Eugene Benbenek, Abutter – 5 Leonard Avenue

The public hearing for Leonard Avenue was originally heard by the Select Board on Monday, May 18, 2015 and continued to this date. The Planning Board requested to be present since it would need to make a recommendation for Town Meeting on this article. (Town Meeting - June 2, 2015).

Attorney Janiak noted that the Select Board raised some issues at the public hearing and he believed he addressed them in letter dated May 28, 2015. Attached to the letter was the zoning history. Attorney Janiak reviewed his letter and ZBA decisions in detail, and concluded that there are no zoning issues prohibiting the discontinuance of a portion of Leonard Avenue. He also discussed the authority of the petitioners to make the discontinuance request, noting he has certificates of the Secretary of State and a certificate of the Registry of Deeds indicating who the trustees are.

Attorney Janiak also mentioned that there was an issue raised at the public hearing regarding the disturbance of soil at Eye Man, and his client mistakenly thought that he could create additional parking as a matter of right based on an ANR that was approved, however a cease and desist was issued and work was stopped.

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Chairman McDonald, noting that Eye Man is seeking additional parking, questioned whether this would require Planning Board approval. Chairman Avila responded that any changes to the parking layout would require parking plan review.

Chairman Avila questioned Attorney Janiak asking if the title examination was complete, since his letter indicated that he examined title to most of the units. Attorney Janiak answered that it was not necessary to do that, and he was simply providing historical background in his letter. He explained that the legal entity that owns the land is Dartmouth Place, and not individual unit owners.

Chairman Avila questioned if the one remaining resident on Leonard Avenue would have any property interests in the remaining section of Leonard Avenue. Attorney Janiak answered by stating that he has frontage on a public way as it exists now, and the bottom line of the petition is that it is a dead end street abutted by two people at the point that's being discontinued.

Chairman Avila clarified that he's questioning the property interests in the private street since it might impact the setback requirements for future parking spaces. Attorney Janiak stated that no one has a property interest in the discontinued portion of Leonard Avenue, noting that Eugene Benbenek has a house on the public portion of the street. Chairman Avila asked if there has been a title search done to determine if Mr. Benbenek has any interest in portion of the street to be discontinued. Attorney Janiak stated that he has not.

Chairman McDonald invited Mr. Benbenek to speak. Mr. Benbenek questioned what would happen to the fire hydrant, which will be in the middle of the parking lot. Richard Rheume, P.E., responded that the DPW requested that a utility and access easement be granted to the Town due to the water main in order to maintain and flush the hydrant.

David Cressman, Town Administrator, explained that the Planning Board would address the fire hydrant location when the applicant went for parking plan approval.

Mr. Benbenek also stated that the street would end at his property line and questioned how the trucks would make a turn around without going on private property. Chairman McDonald reminded Mr. Benbenek that if Eye Man chooses to expand their parking, Planning Board review is required and he could attend that meeting and express his opinions at that time.

Chairman Avila explained the zoning bylaws with respect to rights of way and vehicular easements, noting that the proposed access and utility easement could be construed as a vehicular easement and would require setbacks similar to what exists now. He questioned how discontinuing a portion of the street would help with



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the applicant's intention to create additional parking spaces.

Mr. Rheume responded that a variance may be required because the Town requires setbacks from a roadway and an easement.

Attorney Brian Cruise agreed that whether or not the portion of Leonard Avenue is discontinued, zoning relief would be required to create additional parking spaces. He stated that whether or not the applicants will be able to do what they want to do is not relevant to whether or not the Town has the ability to grant the discontinuance.

Regarding the warrant article, Attorney Cruise recommended that the language be amended on Town Meeting floor to ensure that there is an actual right to grant the easement by the abutters. He stressed that an independent title search will need to be done by a third party attorney of the Town's choosing, paid for by the applicant, to show that they have the ability to do a discontinuance. Only after proof that the applicant has the ability to do the discontinuance and the easement recorded should the discontinuance go through. He recommended that the article amendment language be drafted such that Town Meeting will vote on the discontinuance conditioned upon and subject to a title search being conducted that demonstrates clear title and the ability to grant the easement, and after the easement is recorded, and only after those steps would the discontinuance go through.

Chairman McDonald asked if the Town will have the amended article language ready for Town Meeting. Mr. Cressman responded that Town Counsel's office will have to present the amended article at Town Meeting, and Town Meeting will have to accept it.

The Planning Board did not understand how discontinuing the street would help the applicant since the setbacks to create additional parking would still need to be adhered to due to the utility and access easement. Attorney Janiak responded that it is the first step in the process.

A Select Board member questioned how many additional parking spaces the applicant would be seeking in the future. Mr. Rheume answered 20 parking spaces, which would eliminate an existing grass strip.

The Select Board agreed that it might be premature to move forward with requesting the street discontinuance prior to proper title search etc.

Chairman Avila, noting that the Planning Board will reconvene after this joint meeting to discuss this topic, questioned whether the Select Board is leaning toward withdrawing or moving forward with this article.



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Chairman McDonald stated that the DPW sponsored this article and would be the one to withdraw. The Select Board would have to make a Town Meeting recommendation.

Select Board member Frank Gracie motioned to support the discontinuance of the street as amended by Town Counsel for Town Meeting, contingent upon the petitioners moving forward with the ZBA and Planning Board regarding the parking plan. This motion was not seconded and failed.

Select Board member Stanley Mickelson motioned to hire an independent attorney to do a title search. Chairman McDonald ruled the motion out of order since the Select Board is determining a recommendation for Town Meeting regarding the street discontinuance.

Select Board member Stanley Mickelson motioned to not recommend this street discontinuance. Chairman McDonald seconded it for discussion purposes. A member asked if the petitioner would have the opportunity to come back at Fall Town Meeting with this request. Chairman McDonald stated yes, and the applicant would have the opportunity to meet with Town Boards prior to asking for the discontinuance.

The Select Board unanimously voted (4-0) to not recommend this street discontinuance.

Attorney Cruise reminded the Select Board that Town Meeting will still need to vote on this article and recommended the "floor amendment" still be written up for Town Meeting. The Select Board agreed and directed Town Counsel to have a floor amendment written for Town Meeting.

The Planning Board recessed the joint meeting and reconvened in Room #315.

**(2) Follow-up Discussion**

RE: Article 9 STM

- Discontinuance of a Portion of Leonard Avenue

Present: Brian Cruise, Esq., Town Counsel Associate

Chairman Avila requested that the Board reconsider its previous vote, which was conditioned on a letter from Town Counsel that was never received.

Lorri-Ann Miller motioned that the Board NOT recommend discontinuing a portion of Leonard Avenue. John Sousa seconded the motion for discussion.



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Mr. Sousa stated that the motion is based on the findings and discussion with the Select Board.

Chairman Avila requested two separate motions for this topic. One for whether or not the Board will reconsider its previous vote, and the other to vote on the street discontinuance.

Lorri-Ann Miller motioned that the Board reconsider its previous vote, which was seconded by John Sousa, and unanimously voted (4-0).

Lorri-Ann Miller motioned that the Board's recommendation for Town Meeting is to NOT recommend discontinuing a portion of Leonard Avenue, which was seconded by John Sousa for discussion.

The Board did not see a public benefit or a benefit to the applicant with this request since zoning relief would still be required if the intention is to increase the number of parking spaces for Eye Health Vision Center.

A Board member noted that established ownership rights have not been completely established, and a title search was still required for the discontinuance.

The Board determined that the request to discontinue a portion of the street is premature.

The Board unanimously voted (4-0) to NOT recommend the discontinuance of a portion of Leonard Avenue.

A Board member thought setting up an appointment with Town Counsel to explain the different types of easements and to develop guidelines for when discontinuing roads would be appropriate.

Attorney Cruise clarified that discontinuing a public way does not in any way interfere with private rights that any individual – abutter or non-abutter, may have in that road. The discontinuance just discontinues the general public right-of-way in the road. He further explained that if Town meeting votes to discontinue the road and someone has an easement right, Town meeting's vote will not extinguish the easement right.

Discussion concluded.



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**(3) Discussion re: Dartmouth Spring Annual Town Meeting Warrant  
Article 31**

- General Bylaw – Sign Lighting

Chairman Avila explained the background information regarding this warrant article for the Board.

- Bylaw deals with 2 types of signs
  - Externally and internally lit
- Chairman asked for ZEO's opinion regarding whether LED or electronic signs fell into the category of internally lit signs (if the bylaw passed at Town Meeting)
  - ZEO responded that electronic signs would be considered internally lit signs
  - The Planning Director confirmed ZEO's interpretation
- Proposed bylaw would not allow electronic signs to change, rotate, or flash in any way
  - Chairman felt that bylaw would eliminate the investment people have in electronic signs since they would not be able to use them as intended with their purchase
  - General bylaw does not allow for grandfathered rights
- Bylaw, as written, may be overly restrictive
  - Select Board came to the same conclusion, and has a proposed amendment drafted, which allows for "scrolling" messages on electronic signs
  - The Select Board hasn't officially approved the proposed amendment at this time
- Chairman Avila submitted a copy of the Bliss Corner Mixed Use Bylaw regarding electronic signs as an amendment for signs
  - Proposed amendment to replace the Select Board's proposed amendment to this general bylaw

Chairman Avila asked the Board if it wished to discuss the subject, and if it wished to take action on it.

Discussion ensued. The proposed general bylaw, as written, was reviewed in detail with numerous comments and questions raised.

The Board was disappointed that this general bylaw hasn't been thoroughly



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reviewed, and that numerous changes are needed and being suggested at the last minute. The general consensus being it isn't fair to Town Meeting members to have to deal with so many proposed amendments on Town Meeting floor.

The Board recognized that the Select Board's goals for this general bylaw are safety and "good taste".

Chairman Avila's proposed amendment to this general bylaw is the same language used in the Bliss Corner Mixed Use Bylaw that was recently approved at Town Meeting. The language limits changing messages on electronic signs to once per hour in an attempt to eliminate a distraction to drivers that may be unsafe.

John Sousa motioned to amend the proposed general bylaw – Sign Lighting - as drafted by Chairman Avila, which was seconded by Lorri-Ann Miller for discussion.

The Planning Director reminded the Board that existing LED signs will not be grandfathered and would need to comply with the new bylaw. He felt numerous businesses would be impacted.

Brief discussion ensued regarding the general bylaw and various types of signs in Town.

The Planning Director explained that he and the Zoning Enforcement Officer were only asked to consult on the brightness standards for signs while the general bylaw language was being drafted. He did let Mr. Cressman know that the Planning Board is currently working with SRPEDD to draft a sign bylaw, and stressed that the proposed general bylaw should be properly vetted and in conformance with what the Planning Board is trying to do with the SRPEDD sign bylaw. He felt that this general bylaw was rushed and that mistakes could easily happen, and that the full impacts of the proposed bylaw may not be understood until it's too late.

The Board stressed that this proposed general bylaw was being submitted to Town Meeting, and that Chairman Avila's proposed amendment was an opportunity to at least make it better. After the sign bylaw study is completed, the Planning Board could ask the Select Board to change the general bylaw and make it better.

The Select Board will be considering three things before Town meeting:

1. Select Board proposed amendments shown in "yellow" of the draft given to the Planning Board this evening
2. Amendment to proposed hours of operation
3. The date the general bylaw will become effective



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The Planning Board wondered if its amendment should consider the same three things for Town meeting. The Board determined that Chairman Avila's amendment was adequate, because additional amendments would be even more confusing for Town Meeting members.

The Board stressed that Chairman Avila should explain that the proposed amendment is from the Bliss Corner Mixed Use Bylaw, and no complaints or concerns were given regarding the language addressing electronic signs even after being looked at by study groups, going through the public hearing process, and by Town Meeting members. It was noted that the Attorney General has already approved the proposed amendment language.

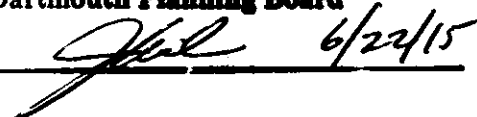
Chairman Avila asked the Board to vote on the motion to forward an amendment to Article 31 – General Bylaw – Sign Lighting, which would strike the Select Board's proposed amendment language and replaced with the current language in place in the Bliss Corner Mixed Use District.

The Board unanimously voted (4-0) to forward Chairman Avila's proposed amendment.

With no further business to discuss, Chairman Avila called for a motion to adjourn.

A motion was made by Lorri-Ann Miller, duly seconded by Joseph Toomey, and unanimously voted (4-0) to adjourn the meeting at 9:15 p.m.

**APPROVED BY:**  
**The Dartmouth Planning Board**

  
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Respectfully submitted,  
Jane Kirby  
Planning Aide