

**Saturday, September 20, 2014
Planning and Economic Development Board
155 Village Street
Medway, MA 02053**

Members	Andy Rodenhiser	Bob Tucker	Karyl Spiller-Walsh	Tom Gay	Matt Hayes	Rich Di Iulio
Attendance	Absent with Notice	X	Absent with Notice	X	X	X

ALSO PRESENT:

Consultant, Gino Carlucci, PGC Associates
Susy Affleck-Childs, PED Coordinator
Consultant, Judi Barrett, RKG Associates

The Vice Chairman opened the meeting at 9:36 am.

Norwood Acres:

The Board is in receipt of confidential emails dated 9-18-14 and 9-19-14 from Town Counsel Barbara Saint Andre.

Mr. Marshall is seeking a construction loan for the project and to put up funding for the bond. Mr. Marshall's attorney provided documents for the Board to sign. Those were forwarded to Town Counsel, but she is not comfortable with the Board signing those. Instead, she recommended a vote that the deeds and the Norwood Acres declaration of trust and the declaration of roadway protective restrictions are in compliance with the Norwood Acres Certificate of Action. A letter from the Planning Board will be provided to Mr. Marshall for purposes of filing this with the bank.

On a motion made by Matt Hayes and Tom Gay, the Board voted unanimously to concur that the two house lot deeds, the declaration of trust and the declaration of roadway agreement are in place for Norwood Acres and are consistent with the Certificate of Action.

The applicant will meet with Susy on Monday October 22, 2014 at 11:00 am to pick up the certification.

ZONING BYLAW RECODIFICATION

Article 3

A copy of Article 3 was provided to the Board. (See Attached)

Consultant Barrett explained that this is a fairly standard section. It includes the administrative procedures and authority for such are placed within the document. There are pieces of this within the existing zoning bylaw. There is not any controversial information within this section. This section basically identifies the building inspector as the zoning enforcement officer.

The Town is currently in the process of hiring a new building inspector. This person will be hired by November 2014.

This section indicates that no building permits will be issued without being in compliance with the zoning bylaw and a permit issued by the building inspector. There is a section on the role of the Zoning Board of Appeals. It is laid out in the statute. It explains that the Zoning Board of Appeals is a five person board with two associate members.

The Zoning Board of Appeals handles variances, special permits, comprehensive permits and appeals of building inspector decisions. It can deal with extensions and alterations of non-conforming uses. The Zoning Board of Appeals can establish Rules and Regulations and set fees.

There is a similar section about the Planning and Economic Development Board which is not required, but most bylaws do have this included.

Consultant Barrett provided some history that until 1975, the only board at a local level in Massachusetts who could grant Special Permits was the Zoning Board of Appeals. After 1975, there was a change whereby Planning Boards were also handling Special Permits and Site Plan review. The Planning Board also has the authority to establish Rules and Regulations and establish fees. The fee schedule is currently set by the Planning Board.

There is a section on Special Permit procedures. The reference to the Zoning Board of Appeals Special Permit and Variance section will be stripped out and cross referenced as noted in the statute. The Special Permit section is consistent with statute. This conveys that the public hearing needs to open within 65 days and the special permit granting authority board needs to make a decision within 90 days. This is at the close of the public hearing. If there is a continuation, 90 days is subject to that continuation. The statute is that a decision has to be rendered within 90 days from date of public hearing.

It was noted that the PEDB keeps hearings open to review the decision before closing the hearing.

Consultant Barrett responded that it is fine to continue the hearing as long as an extension is signed by the applicant and provided to the town clerk.

Susy noted that the PEDB generally seeks a letter signed by the applicant when the deadline needs extending, instead of after each continuation.

This does need to be provided to the town clerk.

The Board agreed that they will get an extension every time a continuation is granted. This would cover the board.

Susy explained that the Board typically continues due to the information which is lacking from the applicant and it is the Board's decision to continue.

Consultant Barrett noted that the language "except by mutual consent" should be added.

The next section discussed was the criteria for Special Permit criteria. The criteria is standard by the statute. Consultant Barrett notes that the Board has the right to add special conditions when needed to any special permit decision. There could be a deadline for construction, dimensional standards, limitation on signage, and requirements for alarms and maintenance, landscaping, dust control and the Board can require a bond or performance guarantee. The bond is great to have in place for some of the drainage issues which the Board has to deal with. It is also good to have the bond in place for commercial project when things are not completely done for the site plan project.

Consultant Barrett recommends having the enforcement within the Special Permit section when enforcement is needed.

In regards to modification to the exterior of a building, you could impose conditions which gives the Board legal ability to take recommendations from the Design Review Committee if the board so chooses.

Susy wanted to know if there could be language for site amenities along with building structure.

Consultant Barrett responds that the Board is already doing this within plan review. The requirements for monitoring and reporting to the building inspector are in there to ensure compliance with the bylaw. This section addresses the automatic renewal procedures. The Special Permit lapses in two years, but it needs to be recorded and the proof of such needs to go to the building inspector. This follows the statute.

The next section reference was 3.3. This includes the powers of the Planning Board and are outlined in the town charter.

NOTE - The audio recording tape ended here. The balance of the minutes are based on notes by Susy Affleck-Childs.

The Board developed the following list of additional items to work on with the zoning bylaw in the future.

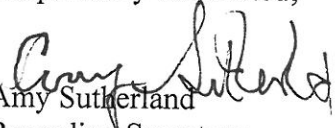
- Describe the DRC
- Update enforcement and fines
- Update parking standards
- Consider a parking reserve approach
- Landscaping standards

- Check Town General Bylaws whether there is a start and start time for construction.

On a motion by Tom Gay, seconded by Matt Hayes, the Board voted unanimously to adjourn the meeting.

The meeting was adjourned at 11:45 am.

Respectfully Submitted,


Amy Sutherland
Recording Secretary
Transcribed from Audio Tape

Edited by,


Susan E. Affleck-Childs
Planning and Economic Development Coordinator

ARTICLE 3. ADMINISTRATION

3.1. Enforcement Officer

- A. The Building Inspector appointed under the provisions of Massachusetts General Laws Chapter 143, as amended, is hereby designated and authorized as the officer charged with the interpretation and enforcement of this Bylaw.
- B. It shall be unlawful for any owner or person to erect, construct, reconstruct, convert, or alter a structure, or change the use, increase the intensity of use, or extend or displace the use of any structure or lot without applying for and receiving from the Building Inspector the required permit therefore.
- C. No premises, and no building erected, altered, or in any way changed as to construction or use under a permit or otherwise, shall be occupied or used without an occupancy permit issued by the Building Inspector. Such permit shall not be issued until the premises, structure, and its uses and accessory uses comply in all respects with this Bylaw, and if applicable, a site plan certificate of completion shall be issued.

3.2. Zoning Board of Appeals

- A. Establishment. There shall be a Board of Appeals consisting of five members and two associate members appointed by the Board of Selectmen. No person shall be a member or an associate member of both the Planning and Economic Development Board and the Zoning Board of Appeals at the same time. The appointment, service, and removal or replacement of members and associate members and other actions of the Board of Appeals shall be as provided for in Massachusetts General Laws, Chapter 40A.
- B. Powers. The Board of Appeals shall have the following powers:
 - 1. To hear and decide appeals in accordance with Massachusetts General Laws, Chapter 40A, Section 8, as amended.
 - 2. To hear and decide, in accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 9, applications for special permits when designated as the special permit granting authority herein.
 - 3. To hear and decide, in accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 6, applications for special permits to change, alter, or extend lawfully pre-existing non-conforming uses and structures.
 - 4. To hear and decide petitions for variances in accordance with Massachusetts General Laws, Chapter 40A, Section 10.

5. To hear and decide comprehensive permits for construction of low or moderate income housing, as set forth in Massachusetts General Laws, Chapter 40B, Sections 20-23.
- C. Rules and Regulations. The Board of Appeals may adopt rules and regulations for the administration of its powers and shall file a copy of such regulations with the Town Clerk.
- D. The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for special permits, variances, administrative appeals, and applications for comprehensive permits in accordance with its regulations.

3.3. Planning and Economic Development Board

- A. Establishment. There shall be a Planning and Economic Development Board consisting of five elected members and one associate member appointed jointly by the Planning and Economic Development Board and Board of Selectmen.
- B. Powers. The Planning and Economic Development Board shall have and exercise all the powers granted to Planning Boards by Massachusetts General Laws Chapters 40, 40A, and 41, and by this Bylaw, including but not limited to the following:
 1. To hear and decide applications for special permits when designated as the special permit granting authority herein.
 2. To review site plans pursuant to Section XX.
- C. Rules and Regulations. The Planning Board shall adopt rules and regulations not inconsistent with the provisions of the Zoning Bylaw for conduct of its business and otherwise carrying out the purposes of said Chapter 40A and this Bylaw, and shall file a copy of such rules in the office of the Town Clerk.
- D. Fees. The Planning Board may adopt reasonable administrative fees and technical review fees for applications for special permits and site plan approval in accordance with its regulations.

3.4. Special Permits¹

- A. Procedures. Application for a special permit shall be filed in accordance with the rules and regulations of the applicable special permit granting authority.
- B. Public hearing. The special permit granting authority shall hold a public hearing within sixty-five (65) days of receipt of a special permit application, and shall issue a decision no later than ninety (90) days from the date of the public hearing. Notification requirements for a

¹ Should this section include a so-called "mandatory referral" clause that instructs the SPGA to send a special permit application out to certain other town boards and staff? I'm sure you already circulate SP applications for comment from other boards. If so, the ZBL should formalize the procedure.

public hearing shall be in accordance with Massachusetts General Laws Chapter 40A, Section 11.

- C. Criteria. Unless otherwise specified herein, special permits shall be granted by the special permit granting authority only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:
1. The use is in harmony with the general purpose and intent of this Bylaw.
 2. The use is in an appropriate location and is not detrimental to the neighborhood and does not significantly alter the character of the zoning district.
 3. Adequate and appropriate facilities will be provided for the operation of the proposed use.
 4. The proposed use will not be detrimental or otherwise offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials, visual or other nuisances.
 5. The proposed use will not cause undue traffic congestion in the immediate area.
 6. The proposed use is consistent with the Medway Master Plan prepared by the Planning and Economic Development Board.
- D. Conditions. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the special permit granting authority may deem necessary to serve the purposes of this Bylaw. Such conditions may include but shall not be limited to the following:
1. Deadline to commence construction.
 2. Dimensional standards more restrictive than those set forth in Article 6 of this Bylaw.
 3. Limitations on signage, number of vehicles or parking spaces, noise, or hours of operation of construction equipment.
 4. Limitation of size number of occupants or employees, method or hours of operation, extent of facilities, or other operating characteristics of a use.
 5. Requirements pertaining to integrated emergency or alarm systems, maintenance, landscaping, dust control, wastewater disposal or water supply, bond or other performance guarantee.
 6. Modification to the exterior appearance of a building or structure.
 7. Requirements for independent monitoring, at the expense of the applicant, and reporting to the Building Inspector, if necessary to ensure continuing compliance with the conditions of a special permit or of this Bylaw.

8. Term for years with or without automatic renewals, to the extent allowed by law.
 9. Other limitations as may be reasonably related to reducing any adverse impact on, or increasing the compatibility of the proposed use, structure or activity with, the surrounding area.
- E. Lapse. Special permits shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under General Laws Chapter 40A, Section 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date except for good cause.
- F. Special permits are not valid until they have been recorded with the Registry of Deeds or Registry District of the Land Court, as applicable as provided in Massachusetts General Laws Chapter 40A, Section 11. Proof of recording shall be presented to the Building Inspector.

3.5. Site Plan Review

(Reserved)

3.6. Design Review

See footnote.²

3.7. Enforcement, Violations, and Penalties

- A. Procedures. The Building Inspector is hereby designated and authorized as the officer charged with the interpretation and enforcement of this Bylaw.
- B. Enforcement.
 1. Any person who is aggrieved by an alleged violation may file a written request to the Building Inspector for enforcement of this Bylaw with reference to such alleged violation. A copy thereof shall also be filed with the Town Clerk. If upon such investigation and inspection the Building Inspector finds evidence of such violation, he shall give notice thereof in writing to the owner and occupant of said premises and demand that such violation be abated within such time as the Building Inspector deems

² I had planned to include a section establishing the DRC and describing its powers and duties, as one finds in most Zoning Bylaws that provide for a design review board. I did not find such language in your ZBL. I did find a description of the DRC's role in reviewing sign permits, OSRD, and ARCPUD applications, but nothing that establishes their authority or provides for their involvement in other types of applications. We need to discuss this.

reasonable. Such notice and demand may be given by mail, addressed to the owner at his address as it then appears on the records of the Board of Assessors and to the occupant at the address of the premises.

2. If after such notice and demand the violation has not been abated within the time specified therein, the Building Inspector shall institute appropriate action or proceedings in the name of the Town of Medway to prevent, correct, restrain or abate such violation of this Bylaw.
 3. If the Building Inspector determines that there is no violation, he shall give written notice of his decision to such aggrieved person and shall file a copy of such notice with the Town Clerk within fourteen days after the receipt of such request.
- C. Appeal. An appeal to the Board of Appeals may be taken by any person aggrieved by reason of inability to obtain a permit or enforcement action from the Building Inspector, as provided in Massachusetts General Laws, Chapter 40A, Section 8, as amended.
- D. Penalty.
1. Anyone who violates a provision of this Bylaw, or any condition of a variance, site plan review decision or special permit, shall be punishable by a fine of not more than one hundred dollars for each offense.³ Each day during which any portion of a violation continues under the provisions of this Section shall constitute a separate offense.
 2. The schedule of fines shall be as follows:
 - a. First offense: warning
 - b. Second offense: twenty-five dollars
 - c. Third offense: fifty dollars
 - d. Fourth and each subsequent offense and maximum per day per violation: one hundred dollars

³ I was surprised to see such a low fine for zoning violations. The Board should consider increasing the fine to the maximum allowed: \$300 for each offense.