

## **Planning Board Minutes, Thursday, February 12, 2015**

The sixteenth meeting of the Milton Planning Board for fiscal year 2015 was held on Thursday, February 12, 2015 in the John Cronin Conference Room in the Town Hall of Milton.

In attendance were Planning Board members Alexander Whiteside, Chairman, Edward L. Duffy, Emily Keys Innes, Michael Kelly, Bryan Furze, Planning Director William Clark, Assistant Town Planner Timothy Czerwienski and Administrative Clerk Emily Martin.

### **1. Administrative Items:**

There were no minutes to be approved at this time.

The next scheduled meetings of the Planning Board are Wednesday, March 4, Wednesday, March 25, and Thursday, March 26. These dates outside of normal meeting times were chosen to accommodate Board members who had scheduling conflicts.

### **2. Citizen's Speak:**

No citizens chose to speak at this time.

### **3. New Business:**

Secretary Edward Duffy asked to speak at the beginning of the meeting. He expressed his displeasure that a traffic study specific to the impacts of the proposed restaurant had not yet been done. He also apologized for his outburst at the prior Planning Board meeting, and announced his resignation from the Board. After he had left the meeting Chairman Whiteside said there is a procedure to follow in order to resign from a public office, and he would like Mr. Duffy to think through his decision before he pursues that course of action.

#### **ANR: 118 Woodland Road:**

Terrance McGuire of 118 Woodland Road approached the table. He currently owns two adjacent parcels, and presented a plan to combine them into a single parcel as he has no intention to develop the second space. A motion was made for Town Planner Clark to endorse plan as not requiring subdivision approval. There was no discussion, the Board voted unanimously in favor.

#### **2 Adams Street:**

Attorney Edward Corcoran approached the table as a representative of the owners of 2 Adams Street. He gave a background on the property, stating there was much time spent on permitting development on the site. The owners have a collection of permits allowing this space to be developed. However, a recession set in and they were not able to begin construction. The original permit would have expired on May 24, 2011 but the owners were granted an extension by the Department of Housing and Economic Development through May 24, 2015. Attorney Corcoran noted that various specifications listed on the Special Permit have been addressed, and the main remaining tasks to be undertaken in accordance with the initial permits would be the construction of the new building.

The Planning Board will be asked to extend the expiration date of this permit by 6 months. The current owner, Extra Space Storage, is in talks with Jack Dawley for his company, Northland

Residential Corporation, to purchase the development rights of this property. There are some details of the project being looked at, such as using a partial wood frame, which would require some modification of the Special Permit. Attorney Corcoran noted that significant funds have been put into this project, as well as many hours of public time in the original review process as pointed out by Member Innes. Chairman Whiteside noted that if the applicant knows what they would like to amend in the Special Permit it would be best to get all the information together for presentation to the Planning Board in a single application for the amendment.

#### **4. Public Hearing: Thayer nursery**

At 7:04PM the Public Hearing on an application for a Thayer Nursery Special Permit continued. Building Commissioner Joseph Prondak approached the table to give the Planning Board some background regarding Thayer Nursery. Mr. Prondak stated he did not intend to sway the Board in their decision. He proposed to present information regarding the challenge of enforcing existing requirements, parts of the Bylaw about which he and council Lauren Galvin have concerns, and recommendations of possible conditions.

Mr. Prondak began his presentation by outlining the process of how complaints of violations are handled by the Building Department and the Zoning Board of Appeals. If a violation is reported, the Department does an investigation into the report. They determine whether or not a violation has occurred, and either send a violation notice to the offender or a letter to the complainant stating no violation was found. He stated every letter he sends can be appealed to the Permit Granting Authority (PGA), which has traditionally been the Zoning Board of Appeals. In recent years, every letter he has sent regarding this property has been appealed, by either the Nursery or the abutters. Each time an appeal is requested there is a hearing before the ZBA, and the ZBA's decision is the decision can be further appealed to the Superior Court. Currently, there are five cases pending in Superior Court regarding this property, two brought by abutters and three by the permit holders.

Mr. Prondak read a portion of Massachusetts General Law Chapter 40A, Section 8 which provides "any appeal will go back to the Permit Granting Authority" under certain circumstances. He noted that paragraph 1 of the Bylaw states that a permit may be revoked by the ZBA under certain circumstances. The ZBA could be in charge of reviewing a Special Permit granted by the Planning Board, while appeals of decisions rendered by the Building Commissioner regarding this property might be brought to the Planning Board.

Mr. Prondak noted some points with respect to the Bylaw. He first noted in paragraph two, under "Purpose", there is language that describes "reasonable limits on amount of infrastructure, equipment and operations". He stressed that there should be specifics in the permit if it is to be enforceable, as many of the current issues that have arisen pertain to nonspecific matters. He gave an example that a provision for "an amount of mulch consistent with its business use/expected business practice" is too vague, and might better be defined as "100 yards of mulch/bulk product". However, even within that is a question of the turnover of the product, and how frequently it needs to be delivered.

Mr. Prondak then referred to Section 2 of the Bylaw which provides "The landscaping business may be authorized to sell trees, shrubs, sod, seed, loam, mulch and related material and may be authorized to sell stone, stone dust, gravel, pavers, landscape ornamentations, timbers and related materials needed to implement a landscape design." He stated that some of the materials listed could also be used in construction projects. Mr. Prondak suggested the need for a quantification of pavers and masonry products. Member Innes pointed out that if the quantifications were

product specific they would soon be outdated, and would need to be reviewed. Also in Section 2 Mr. Prondak noted the language that "Authorization of an activity shall be at the level no greater than the level of that activity existing in 2012" was lacking, as the levels are not spelled out and if not done so it will be hard to enforce in the future.

In Section 4, Part (d) on the Drainage Plan, Mr. Prondak noted that complaints about existing conditions are hard to verify, and causality is hard to establish. He suggested that if a professional engineer designs the drainage system and then certifies that the system was installed as designed, that would be a good practice. He noted that drainage plans aren't perfect, and there may be circumstances in the future which may cause drainage problems (ex. hurricane). With respect to Section 4, Part (h) ("There shall be no new or materially altered buildings except as may be specifically approved in the Special Permit."), Mr. Prondak said it is important to ensure that any future building on this property secure an amendment of the Special Permit.

With regard to Section 4, Part (j) Mr. Prondak noted that sound buffering is a good measure to mitigate disturbance of abutters, but that, like drainage, it is not a perfect science. The Department of Environmental Protection has general noise pollution standards ("not 10 decibels over ambient noise"), but "ambient noise" is hard to establish as it can change with humidity, temperature or the time of day. Mr. Prondak suggested that an ambient noise study might be useful. Regarding Section 4, Part (p), Mr. Prondak believes the amount of firewood to be stored on site, as well as how much is sold "at the level no greater than the level of that activity existing in 2012" should be quantified, so there is no question of those amounts in the future. This subsection also speaks of "safe and reasonably quiet loading of trucks making deliveries", which Mr. Prondak also noted similar language in the section on dumpsters. He cautioned that their use could be noisy and that measures about noise would be appropriate.

Along the same lines Mr. Prondak noted in Section 7, Part (d) it is stated "Back-up horns on vehicles used on site shall be modulated to the minimum level deemed permissible by applicable law." He expressed concern that it is not specified what the applicable law is. Member Furze questioned whether the specific law should be specified, Mr. Prondak agreed that it should.

In Section 7, Part (e) there were some sentences to which Mr. Prondak drew attention, the first with respect to "loading or use of noisy equipment for the loading of plant and nursery materials, which are not sold as part of landscaping service." He pointed out that there can be a difference between materials for a nursery and materials for landscaping. Mr. Prondak drew attention to the sentence reading "With respect to any deliveries made outside of these hours, the operators shall maintain a log available for public inspection stating the type and time of delivery and the reason it was made out-of-hours.", and emphasized that "the public" doesn't mean just town officials, it means any member of the community that requests that information.

At that point Mr. Prondak made some suggestions for possible provisions in the Special Permit that might help alleviate the current strain between Thayer Nursery and certain abutters. He suggested that the hours of operation should be clearly defined and consistent throughout the Permit, both for business operations and use of machinery. He suggested that amounts of products need to be quantified, so there is a determinate amount that can be measured if a complaint arises. Mr. Prondak noted that sales and service of machinery that is used for landscaping, (ex. tractors, lawn mowers, leaf blowers, etc.) are not permissible. A "gift shop" for general merchandise also would not be permissible. He stated that the Special Permit should list what types of vehicles are owned by the company, so that when new vehicles are purchased they are buying the same size as historically used, in order to ensure that nothing larger as previously utilized and kept on the property is purchased as a replacement.

Mr. Prondak made reference to the Dover Amendment. He stated that he believes if this Special Permit is approved then Thayer might be required to forfeit their right to Dover Amendment protection, so that an applicant could not use it to try to override the conditions set on the Special Permit. He recommends that the Planning Board outline on the Special Permit what are the current activities that could be considered falling under Dover Amendment protection. Mr. Prondak noted that if the Nursery has events at which there is live music there needs to be limits. He believes that a Permit should specifically say that Thayer cannot be a construction business, and should not be allowed to sell accessory buildings (sheds, cabanas, etc.). He stressed the need to have proper facilities on site for employees. Lastly Mr. Prondak expressed his desire for a condition that specifically authorizes the Town of Milton and the Building Commissioner to inspect the premises at any reasonable time without an appointment. Member Innes agreed with Mr. Prondak's suggestion for "measurable quantities", as it will be useful in handling possible future disputes.

Attorney Corcoran approached the table to describe changes made by Thayer Nursery. He said the prior week owner Josh Oldfield met with abutter Pamela Lepore to discuss issues she has with the nursery and how to mitigate them. They discussed changing the traffic pattern of trucks on the property and the height of the fences to minimize truck noise and visibility. They proposed siting the material storage bins so that they are at least 49' from the property line, and repositioning sprinklers to be closer to these bins to mitigate any dust that may arise from stored materials. Mr. Corcoran noted there are 4 significant spotlights on the property, and the lighting plan proposes to adjust the direction of the light downward and to have the lights turned off at 10PM. He also described that from the southwest corner by Forest Street there is a change in elevation from 196' to 182' at the Rowe/Johanning property line. There it is proposed that a 10' fence be erected at an elevation of 174' to provide a visible height.

Attorney Corcoran showed where 10,000 square feet of previously impervious ground will be removed and replaced with a nursery stock growing area, and also noted the Oldfields spoke to the Coles, who in lieu of a fence want an infill of evergreen trees to provide a barrier to the Nursery. Mr. Corcoran then addressed parking, which he said should suffice and that there is rarely need for as much parking as is being provided (including 16 new spaces). He noted that 3" padding will be installed in the base of the dump trucks to muffle the sound of loading them with firewood. Member Innes requested figures regarding the turnover rate and quantities of material to be sold at the business. Mr. Corcoran advised that in the materials provided by the applicant there was a schedule of average weekly deliveries by material, size of delivery truck and number of trucks. There are records of annual delivery amounts, he would get the figures of turnover of material. Chairman Whiteside inquired about facilities for employees, Mr. Corcoran pointed out the location of two bathrooms on site. Member Kelly inquired about a swale on the east property line, Mr. Corcoran confirmed there is a naturally occurring dip in topography that occurs on the applicant's side of the fence, which would help with runoff. They are in discussions with the Town Engineer, John Thompson, about a possible overflow connections. The discussion of the Thayer Nursery Special Permit was continued to Wednesday, March 4 at 7:15PM.

#### **Public Hearing: 556 Adams Street:**

At 8:28PM the Public Hearing for a proposed restaurant at 556 Adams Street resumed. Marion McEtrick approached the table as the attorney of Falconi Properties, LLC. She began her presentation noting that at the previous meeting there had been a request for a traffic generation study, which the Falconi Companies had engaged Howard/Stein-Hudson to do in November 2014. The information was provided to the Planning Board. Falconi Companies had also

requested an opinion from HSH to see how the traffic generation statistics done for this project integrated into the previous traffic and parking study in East Milton Square. She noted that a restaurant use was recommended in the original study as a good use of this building. At that point she requested that Jeff Hasson of Morse Engineering approach the table to discuss the details of the study.

Mr. Hasson approached the table to discuss the recent Howard/Stein-Hudson study. He said that in their calculations they used a base flow model, and that they had anticipated the development of this property. He read an excerpt of a communication from a PE at HSH, Kerry Pike, to Town Planner William Clark: "I believe you are correct that the effects are de minimis as to traffic and parking. They're providing parking, and the trip numbers are small and would have been accounted for in the East Milton Square analysis, and designed through the background growth rate." Mr. Hasson expressed his opinion that the study was aggressive and had projected traffic higher than it actually is, and that they employed the worst case scenario which doesn't take into account pedestrians and public transportation. He noted that the classification given to this restaurant by the ITE was Code 931, which would allow for a "pass by" trip reduction of 60% thereby lowering the expected number of cars and trips, and that the reduction was not taken. Chairman Whiteside opened the floor to any questions, resident Tony McDonnell of 4 Mechanic Street approached the table. He asked the date the traffic study was done, and was told that it was done in November of 2014. An updated memo dated February 11, 2015.

Attorney McEttrick approached the table again to speak about a letter she wrote to the Planning Board to explore other use options for this property. One possibility was a theatre, as this was the historic use of the building. She noted that if there were to be a theatre, it would have peak business times similar to the proposed restaurant. She also pointed out that the Zoning Board of Appeals would be the authority to determine parking, as it has been with the Falconi project. Ms. McEttrick said that if the ZBA required a parking ratio the same as the restaurant is providing (2.5:1), then over 200 off-street parking spaces would be necessary. She also researched using the space for a retail operation, she believes the parking requirement would be about 32 spaces, but she speculates that use would generate more in and out trips. There was no trip generation study done as those are not proposed uses, however she wanted the Board to be aware of those parking requirements for purposes of comparison. She stated that this is a property zoned for commercial use and it should be expected that there will be parking needs and traffic issues that arise from any new business. She sees the proposed use of a high quality restaurant to be the best use of this space. She noted the proposed valet parking will mitigate parking issues, as well as the fact that employees will be required to park offsite to leave more spaces for patrons, and that some patrons will be coming on foot from the surrounding neighborhood and therefore not adding any additional traffic to the area.

Chairman Whiteside noted that at a recent Board of Selectmen meeting there was a mention that the Board of Appeals was waiting to receive the Planning Board's decision on Site Plan Approval (SPA) prior to making their determination on the Special Permit so the Board might incorporate portions of the SPA into the Special Permit. Member Furze clarified that the traffic study being referenced was done in 2012, and that the later dates mentioned were those of memos and reports based on the 2012 data.

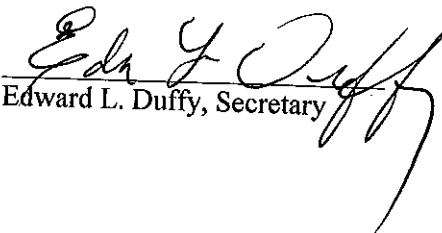
The floor was then opened to any residents who wanted to speak further about what they might see as potential issues with the project. Tony McDonnell of 4 Mechanic Street approached the table to voice his concern over snow removal at the site. Robert Falconi approached the table to say that the two properties the Falconi Properties own in East Milton have both been almost completely cleared of the recent snow, and the portions that aren't fully cleared were already

scheduled to be fully plowed the following morning. He also noted that the Church Street parking lot has a 7-9' buffer around the lot to allow for piling of removed snow. Chairman Whiteside suggested that Site Plan Approval could provide that the lot shall be kept free of snow or ice so that the authorized spaces are not obstructed.

Peter Dunn of 84 Franklin Street approached the table and questioned if the 566 trips generated on Saturdays were round-trip or one way. He was told that those were one way trips. It was also confirmed that U-turns would not be allowed on Adams Street for patrons to reach the valet station. Tony McDonnell approached the table and reiterated his concern over the MBTA bus stop in front of his property. He believes that the bus stopping for riders at that location causes traffic tie-ups within the Square. He thinks that the Planning Board should seek to move the bus stop to a place where there is enough room to pass around the bus when it stops for riders. Chairman Whiteside noted that this is a matter to be addressed by the MBTA, as the Planning Board has no authority in this matter. However he did say the Board can recommend to the MBTA to move the location of the stop. Debbie Elwood of Falconi Properties approached the table and said that the company has been working hard to remove all the snow from their properties, and while doing so has taken it upon itself to plow some of the surrounding streets in order to help the neighborhood.

At 8:59PM Member Innes made a motion to close the Public Hearing on this matter, Member Furze seconded and the Hearing was closed. Both Chairman Whiteside and Member Furze distributed edits on the draft Site Plan Approval document, which the Board then reviewed. There were various changes and additions made to the draft. These included a provision that approval from the Traffic Commission would be necessary for valet parking to occur, that there be a condition for a construction management plan to be submitted to and approved by the Department of Public Works and Building Inspector, and that snow removal language be added. After this discussion, Member Innes moved to grant Site Plan Approval to Falconi Properties, LLC, on the specific terms. The Board voted unanimously to approve, and will sign a decision reflecting those terms.

5. **Adjourn:** 9:05PM

  
Edward L. Duffy, Secretary