



TOWN OF
STONEHAM
MASSACHUSETTS

PLANNING BOARD
781-279-2695

STONEHAM PLANNING BOARD MINUTES

(in accordance with provision of M.G.L. c.30A, §§ 18-25)

Monday, May 2, 2022

Town Hall
Hearing Room
6:30 P.M.

Members present: Chairman Frank Vallarelli, Vice Chairman Kevin Dolan, Daniel Moynihan, Terrence Dolan and Marcia Wengen.

Also present in person: Erin Wortman, Director of Planning and Community Development, Attorney Charles Houghton and Town Clerk Maria Sagarino acting as clerk to the Planning Board.

The Chairman brought the meeting to order at 6:35PM. Erin Wortman the Director of Planning and Community Development was recognized to speak on Article 8 of the Annual Town Meeting being held that same night. Ms. Wortman begins by telling the Board that she watched the recording of the meeting and believed there was a bit of confusion with the vote the Board took for their recommendation and what their intent might have been. In their vote to provide a favorable recommendation to Town Meeting it appeared that they wanted to remove strikeouts from what was presented but the vote they took kept the strikeouts which was in conflict with what the Board appeared to want to do. Ms. Wortman goes on to explain why she and Mr. Houghton felt the changes presented were necessary. The Planning Board and Town Meeting had decided to be intentional with the requirement of a special in the inclusionary bylaw. There was no option to waive. Ms. Wortman felt that in that regard it was unnecessary to seek something discretionary for something that is required. You should never have site plan, definitive subdivision or a special permit for something that your Code says is mandatory and that is why she felt the two changes to Section 6.12.3 were necessary. Mr. Moynihan asks for clarification on the changes that Ms. Wortman is talking about. She was referring to the two changes as proposed in Article 8, specifically the strikeouts to both sections.

Article 8, as proposed in the Annual Town Meeting warrant, reads as follows:

6.12.3 Applicability

1. Division of Land. This Bylaw shall apply to the division of land into eight (8) or more lots and shall require a special permit from the Planning Board under Section 7.4 et seq. of the Zoning Bylaw. A special permit shall be required for land divisions under G.L. c.40A §9. ~~as well as for "conventional" or "grid" divisions allowed by G.L. c.41 §81-L and §81-U, including those divisions of land that do not require subdivision approval.~~
2. Multiple Units. This Bylaw shall apply to the construction of eight (8) or more dwelling units, whether on one or more contiguous parcels ~~and shall require a special permit from the Planning Board pursuant to Section 7.4.~~

Ms. Wortman explains that it is eliminating the special permit requirement, that discretionary last step in any approval that already requires inclusionary zoning. So 6.12.3 paragraph 1, that strikeout deals with subdivisions and approval not required plans, by right housing. Paragraph 2 deals with what we deal with

more classically, apartment buildings, town house buildings, anything that is one lot with a lot of dwellings in one building or multiple buildings. Ms. Wortman continues to say that the reason the Board wants to support the strikeout in both cases is because it is not necessary to have a discretionary last step which is a special permit when you have said in your zoning code that it's required. Mr. Moynihan questions where in the zoning code. Ms. Wortman responds that it exists in section 6.12. When you added inclusionary zoning last year it says that eight or more units must have inclusionary zoning. Mr. Moynihan asks if she is saying that it's superfluous language. Ms. Wortman says yes, that she is saying it is unnecessary and not in the spirit of Chapter 40A to have a discretionary permit for something that you can't deny because it is required. Mr. Moynihan questions whether the first lines of 6.12.3 paragraph 1 aren't saying that anyway. Ms. Wortman states that that is why it is fine up until the strikeout.

Mr. K. Dolan comments that he agrees with Ms. Wortman or certainly did up until April 20th when Town Counsel gave the Board legal advice and said we were perfectly fine where we are. Mr. K. Dolan goes on to say that he read the land court cases and he agrees and expected to go to the meeting [April 20] and hear that we have to strikeout that language. Ms. Wortman says that with that case, if we are hypothetically talking about High Street, we are mandated to do inclusionary zoning and affordable housing if they do eight or more units. That still exists even with the strikeouts. It's just saying that a special permit is not necessary because they have to do it. Ms. Wortman gives the example of buying that property and wanting to build ten house lots. She comes in for a definitive subdivision. She shows you where the inclusionary housing is. We do an approval. We are good to go and then I need to apply for a special permit, to then have a public hearing. What would the Board rule on? That they have to follow the Code? She asks if they see what she's saying? Mr. K. Dolan agrees. A few weeks ago the Board approved 95 Maple Street and said that they had to include inclusionary zoning pursuant to 6.12.3. Ms. Wortman states that that was part of the approval for that property. You're not approving anything, you're telling them that they have to follow the rules that exist based on the adoption of your inclusionary zoning at Town Meeting. Ms. Wortman says that whatever happened at the Planning Board meeting on April 20th doesn't matter. The High Street case in a lot of ways doesn't matter. We respect Town Counsel. We follow Town Counsel, but she believed that [bringing up High Street] muddied the water because the strikeouts in paragraph 1 are just saying there is no special permit in addition to, it has nothing to do with any land court case. This was written well before that case law was submitted to us. This article was written prior to the Board becoming aware of the Concord case. Ms. Wortman continues to say that this is separate from that and the problem is that you are looking at them as if they are related. They exist in the same space but they are not related. Mr. K. Dolan agrees with Ms. Wortman's reasoning but asks how it hurts to keep it in? Ms. Wortman responds that someone can be aggrieved, like with a subdivision. They have an approved definitive subdivision built to the specifications of your zoning code, why are they then going to the Planning Board to then ask permission to do affordable housing? And that special permit can be appealed. That makes the Planning Board vulnerable in this circumstance. You are creating a process that doesn't need to exist. Mr. Vallarelli states that any subdivision can be appealed. Ms. Wortman agrees but states that that appeal would be based on the outcome of the subdivision approval which is the creation lots and how the utilities work. What is discretionary about telling an applicant that they have to follow the rules? It's like creating a subdivision for a setback that already exists. If we are saying that you have to be ten feet off the lot on the side and then you create a line in your zoning code that says all setbacks require a special permit. It doesn't make sense. They just have to follow the rules which are in the Code that exists. Ms. Wortman believes that if you allowed for an applicant to apply for a special permit to waive the affordable requirement then that is a special permit that would be reasonable, but that's not what you did. Mr. K. Dolan agrees that that is not what the Board did. That's not what's on paper. Ms. Wortman agrees no matter what the intent was. That's what she is worried about.

Ms. Wortman continues to say that section 2 deals with 40A§3A. Mr. K. Dolan states that 40A§3A is not really about affordable housing so much as increasing intensity or the amount of housing. Fallon Road is in front of us tonight and we're saying let's count that towards 40A§3A. Let's make it by right for residential. He continues to say Ms. Wortman worked on the bylaw with Mr. Houghton and he is okay with that but his concern is that he'd like to do the 40A§3A as a piecemeal. That would be twenty acres or so out of the fifty. Then the Planning Board, Select Board and Planner would work on where the next chunk comes from and this is assuming we want to go forward with 40A§3A. Some towns don't. Mr. K.

Dolan doesn't see any harm in Fallon Rd going toward 40A§3A. The other acres have to come by 2024. It's a long time and we are ahead of most towns. Other towns don't understand and they're not complying. Other towns are saying, do we want to have that intensity. Mr. K. Dolan's thought on the strikeout, he'd like to stick to the decision where the Board said except for the Fallon Road Mixed Use District. On the first section strikeouts, he can't disagree with Ms. Wortman on that one. He doesn't see how it hurts us to remove it. He'd like to be a little more measured where the second strikeout is concerned and 40A§3A. Ms. Wortman asks if she can make the Board feel better about paragraph 2. She hears what Mr. Dolan is saying with Fallon Road. If you strikeout what is proposed, every other eight plus unit dwelling development in Town goes before you already, therefore and in your section 6.12 it says that the special permit for inclusionary zoning is required and the Planning Board already has an existing special permit, you can fold it into each other. Basically, in order to stream line the process the bylaw contains language to that affect. While Ms. Wortman looks for the section in 6.12.3, Ms. Wengen asks if that would mean Fallon Road wouldn't require affordable units. Ms. Wortman tells her that anything with eight or more dwelling units must have affordable units based on the bylaw and that includes Fallon Road. Ms. Wortman then reads section 6.12.4 to the Board as follows:

6.12.4 Mandatory Provision of Affordable Units

1. The Planning Board shall, as a condition of approval of any development referred to in Sections 6.12.3 (1) and 6.12.3 (2), require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this Bylaw and more fully described in Section 6.12.5.

Ms. Wortman continues to say that 6.12.5 goes over the provisions and then she refers to 6.12.5 (d) which says:

- d. The Planning Board may, as part of any Special Permit decision, modify the number of affordable units as required by Section 6.12.5. (1)(a) upon a finding that due to unique conditions effecting the property, project location, or other beneficial site designs, that the affordable unit requirements of this section would unreasonably restrict the use of the property or would be detrimental to the orderly development of the area or would create a better project. In granting such modifications, the Board may impose conditions it deems necessary to protect the purpose of this section. In no case shall the percentage of affordable units be reduced to less than twelve (12) percent.

Ms. Wortman continues to say that the next sections talk about siting, local preference options, marketing, market incomes etc. She continues to explain that she understands that they might want to piecemeal 40A, but if you strike those words in paragraph 2, it only impacts the new Fallon Road District. Mr. K. Dolan states that it is preserving that and Mr. Moynihan states that they are excepting Fallon Road from that. Ms. Wortman clarifies what she is saying. If you go with what is proposed and you agree with what is struck, it doesn't allow for that last special permit step but the Planning Board has jurisdiction over every eight plus dwelling unit development in Town except for Fallon Road. Because the Town Clerk can't help herself, she chimes in to give an example. Ms. Sagarino says that even if Town Meeting strikes this language something like 95 Maple Street would still be a development that had to go before the Planning Board just not specifically for a special permit regarding the affordable units but for the development itself. Ms. Wortman agrees and states that it doesn't change the Planning Board's authority to have say in the developments. Mr. Moynihan asks why? Ms. Wortman continues to say that it is because of how the other zoning districts are written in the Zoning Code. Mr. K. Dolan states that unless it's allowed by right. Ms. Wortman agrees but states that nothing is going to be allowed by right except Fallon Road. Mr. K. Dolan says that that is what the Board is trying to say. Ms. Wortman reiterates that if they strike those words, "and shall require a special permit", what they are intending and what this does are the same thing without saying "except for Fallon Road". Mr. K. Dolan believes it takes away the Planning Board's jurisdiction subsequently and Ms. Wortman does not agree. Mr. Dolan continues his thought about it being zoned subsequently by right. Ms. Wortman says that nothing exists. Mr. K. Dolan agrees but states

that tomorrow they could make Main Street all the way down by right. Ms. Wortman believes Highway Business becomes part of the 40A§3A conversation down the line but with Fallon Road as proposed and voting favorable on what is being stricken or deleted in Article 8. She continues to say that what the Board's wishes and intentions are meet what is being edited by this Article but in a different way. The outcomes are the same. Mr. K. Dolan asks if that is the case, why wouldn't the Board just go with what they had talked about at the last meeting and make the exception for Fallon Road. Ms. Wortman states that the Town Moderator could say that it's out of scope. Mr. K. Dolan believes that Town Counsel opined that it wasn't. Conversation then centered around the Moderator believing that the article was changed too much for a motion to be made directly to Town Meeting which removed the strikeouts and added the "except in Fallon Road Mixed Use District" language. She would like the original motion made to Town Meeting and then an amendment presented to Town Meeting. It was explained by Ms. Sagarino and Ms. Wortman that although the Planning Board and Attorney Houghton understood that the language being added was less, the Moderator had indicated what they proposed was too much of a change to the language Town Meeting expected with some strikeouts being removed and all of the words being added. Mr. Houghton should read the motion based on the article submitted and then attempt to amend the article if inclined to remove strikeouts and add the Fallon Road exception language. Ms. Wortman tries to get back on track. She asks if the Board is favorable if they are getting to the same endpoint with the language as it appears in the original article. If the product is the same as what you wish, even if it looks differently, are you favorable or unfavorable? Mr. K. Dolan believes that the Board wanted to retain special permit jurisdiction except for Fallon Road which is allowed by right and Mr. Houghton makes his original motion and the Board amends. Ms. Wortman questions what the report would be. Will it be unfavorable as presented? Mr. K. Dolan thinks that they'd say partially favorable, partially unfavorable and this is the motion amended to satisfy the Board. Ms. Wortman states that an individual member would need to make the amendment. Ms. Wortman asks if they are ready to answer questions when the Select Board is in favor of what the applicant proposed, the Finance & Advisory Board is in favor and you are kind of in favor? Mr. K. Dolan says that they want paragraph 2 that deals with 40A§3A, they want the by right residential applied certainly to Fallon Road then as we identify other properties in the future for by right residential then we can further amend the bylaw. Ms. Wortman questions why. She once again tries to give an example to the Board. In Residence B, if you want to construct eight or more units, with your current zoning code, it would require a special permit from the Planning Board. If I wanted to do eight or more units in the senior residential overlay district, it would require a special permit. Your special permit exists. Your authority exists. The striking out of the language in the second paragraph does not change that. Mr. K. Dolan states that their authority exists only to inclusionary zoning, but if a project came in as of right it would have no special permit requirement. Ms. Wortman questions why you would need it if it's required for eight plus units. Mr. Dolan answers because that is just the inclusionary zoning portion of it. Ms. Wortman tries to clarify again that for inclusionary it is discretionary approval for something that is required, the Board's special permit powers exist inclusionary or not. Mr. K. Dolan interjects, except by right. Ms. Wortman again states that nothing is by right, eight plus units, except for Fallon Road. Mr. K. Dolan says that that is right now and Ms. Wortman agrees, but if it were to change down the line it would be a different conversation. Mr. Dolan asks the other members what they think. Mr. Moynihan mentions the hour and a half spent two weeks ago and the opinion given to the Board by Town Counsel. He read the land cases and he knows that that is irrelevant for what Ms. Wortman is saying but their focus was on the case law and what Mr. Houghton was saying at that time. He continues to say that Town Counsel, who we are supposed to listen to, told the Board that this bylaw as it stands is a valid bylaw. It appears that the Board is in quite a quagmire here with amendments and such and he isn't very comfortable with it and he again brings up how the Board voted two weeks ago. The Board is reminded that two weeks ago, they left the strikeouts in when they voted on their recommendation and just added language excepting Fallon Road. The conversation then goes back to the Moderator looking at Mr. Houghton's proposed motion and stating that she believes a motion should be made based on the original article and that the proposed motion should be offered as an amendment. Mr. Houghton will make his original motion and then it was decided that it would be best if the amendment based upon the Board's input was made by him as well.

Mr. Houghton quickly reads off what he believes the Board would like his proposed amendment to be to Town Meeting:

6.12.3 Applicability

1. Division of Land. This Bylaw shall apply to the division of land into eight (8) or more lots and shall require a special permit from the Planning Board under Section 7.4 et seq. of the Zoning Bylaw. A special permit shall be required for land divisions under G.L. c.40A §9. as well as for “conventional” or “grid” divisions allowed by G.L. c.41 §81-L and §81-U, including those divisions of land that do not require subdivision approval.
2. Multiple Units. This Bylaw shall apply to the construction of eight (8) or more dwelling units, whether on one or more contiguous parcels and shall require a special permit from the Planning Board pursuant to Section 7.4 except a Special Permit from the Planning Board shall not be required in the Fallon Road Mixed Use District for the construction of eight (8) or more dwelling units.

The Board decides to take a new vote on what they will recommend to Town Meeting for Article 8.

Mr. K. Dolan makes a motion that the Board supports 6,12.3 subsection 1 with the strikeouts and they support removing the strikeouts in subsect 2 and adding the language “except a Special Permit from the Planning Board shall not be required in the Fallon Road Mixed Use District for the construction of eight(8) or more dwelling units”. Mr. T. Dolan seconded the motion. All members present voted in favor.

Mr. Houghton asks the Board to approve the Covenant for 471 Main Street as required by condition 2 of the Planning Board Special Permit decision dated March 29, 2019. Ms. Wortman states that the Planning Board needs to provide approval so that the Building Commissioner may grant a temporary occupancy permit for the affordable unit and explains that once the Housing Trust is in place we will be able to go through the Department of Housing & Community Development process to add the unit to the Subsidized Housing Index (SHI).

The Board signs the covenant for 471 Main Street.

Meeting adjourned at 7:10PM and the Planning Board attended the Annual Town Meeting.

Documents and other exhibits used by the Planning Board during this meeting to be made part of the official record but not attached to these minutes:

Planning Board Special Permit Decision for 471 Main Street and 5 Linden Street dated March 29, 2019.

Covenant Agreement by James Castellano and 471 Main Street Stoneham LLC and 471 Main Street Condominium Trust with the Town of Stoneham Planning Board Regarding 471 Main Street, Stoneham, MA filed with the Middlesex South Registry of Deeds on May 3, 2022. Recorded as Book and Page: 80071/504.

Respectfully submitted:

Maria Sagarino
Town Clerk