



Town of Danvers Planning Board

1 Sylvan Street, Danvers, Massachusetts 01923 | p: 978-777-0001

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Planning Board Members:

William Prentiss, Chair
John Farmer
James Sears
Margaret Zilinsky
Charles Smith
Nathaniel Sears, Associate

Town Manager's Conference Room December 5, 2019 8:00 a.m. MINUTES

William Prentiss called the meeting to order at 8:00 a.m. Planning Board members Margaret Zilinsky and Charles Smith were present. Director of Land Use and Community Services, Aaron Henry, was also in attendance.

Subdivision Administration

1. Beaver Brook Woods Definitive Subdivision Plan

- A. Beaver Brook Woods, LLC submitted a request to the Board for acceptance of a covenant, in place of a performance guarantee, and to endorse the approved plans, according to the Planning Board's *Rules and Regulations Governing the Subdivision of Land*.

Prentiss opened the meeting.

Prentiss said that this meeting was for administrative purposes relative to the subdivision known as Beaver Brook Woods. Right now, they have to sign the mylars that have been provided to the Board to accept the Planning Board Covenant in place of a performance guarantee. He confirmed that everyone received their packet of information.

Henry said that they do not have the consent of the mortgagees on the properties. He pointed out that McCann struck that item from the Covenant Agreement. He told the Board that there have been many discussions and he has opined about this, but it is time to endorse the plans.

Prentiss told the Board that they have waived this item on previous Covenant Agreements.

MOTION: Zilinsky moved to accept the Covenant Agreement for Beaver Brook Woods Subdivision in place of a performance guarantee. Smith seconded the motion. The motion passed by unanimous vote.

- B. Beaver Brook Woods, LLC is also requesting the Board discuss the proposed relocation of the paper street (an access easement) that provides access to an abutting Town-owned property.

Prentiss told the Board that the applicant wants to present the possibility for a slight change to the subdivision plans.

Attorney Nancy McCann addressed the Board. She said that with her was the applicant, John Colantoni, and the engineer, Scott Cameron. McCann said that they need to figure out the right-of-way that the Town has the benefit of. She reminded the Board that they had authorized her to work with Town Counsel and staff to figure this out. She submitted a letter to the Board on November 21, 2019. It is not particularly complicated. Basically, the plan that is being shown shows the subdivision with the 50-foot right-of-way that the Town has the benefit of outlined in red. It cuts through Lot 7 and Lot 6. Lot 7 and Lot 6 are still buildable, but they are not ideal.

Prentiss told the Board that this is the plan that they are endorsing today.

McCann said that she was going to discuss an alternative plan as well. This alternative plan has been discussed with Town Counsel.

McCann said that there is no change between the original plan and the alternative plan. A subdivision is the laying out of the streets and utilities. There is no difference of laying out the subdivision between the two plans. The only difference is the location of the right-of-way that the Town has. This is Mylar #1.

McCann said that Mylar #2 shows a different location of the right-of-way. Since it was not a great location for the right-of-way as shown on the original plan, they did this alternative plan. She said that there is a legal question as to whether this right-of-way would allow access onto an abutting piece of property.

McCann said that under case law, the owner of the land underneath an easement, the servient estate, has a right to relocate an easement so long as it does not make the situation worse for an easement holder. The dominant and servient estates have to agree that the holder of the easement does not have any worse conditions.

McCann showed the alternative plan. There would be no change in the layout of the road or utilities. They relocated the easement to follow the road to the end of the cul-de-sac. Then they moved the easement to follow a drainage easement between Lots 5 and 6, rather than cutting through lots 6 & 7. The easement is the same width. This way the houses can be uniformly placed on the lots. They will not be impacted by a right-of-way coming through the back yard and front yard. They would grant the easement to the Town so there would be no question whether it can be used. The right-of-way was laid out in 1923, and the language can be corrected. The Town has an easement that follows the street and relocates it so that the Town has an easement for access to the abutting property. This way there would be no question. It would be an easement that is usable. No one can question it in the future to get to abutting property.

McCann said she discussed with Town Counsel how to best proceed with this proposal. Should they go to the Board of Selectmen first? Town Counsel recommended going to the Planning Board first. The Selectmen will look to the Planning Board for their opinion to relocate the easement. The Selectmen will decide whether the test of relocation is met. That is all the Selectmen will have to do. The servient estate has a right to relocate an easement provided that the Selectmen say you meet the test. Town Counsel will say that the Selectmen would ask what the Planning Board would say. She would like to present the original and alternative plan to the Board of Selectmen. She would ask that if the Planning Board agrees with relocation, they can endorse both plans so that they do not have to come back to them. She requested a motion to send a recommendation or indication to the Selectmen that they support the relocation and then they would go to the Selectmen. This way they would not have to come back to the Planning Board. If the Selectmen do not agree, they would go through with the original plan. Town Counsel agreed that both plans could be endorsed. The relocation of the easement has to happen between the applicant and the Selectmen. She has tried to keep it as simple as possible. This is a better location for the right-of-way. It eliminates the potential risk to the Town. Someone living there could question that the right-of-way might not be able to be used to get across. The right-of-way was laid out in 1923.

Henry said that the right-of-way was laid out in 1950.

McCann said the risk is still there.

Prentiss said that he felt the movement made more sense to him. It opened up the area. It raised a question regarding water drainage. They are not required to make a vote on this. He would like to make a suggestion that if the Board felt it is a better option, they can write a letter to the Board of Selectmen that they feel that this plan works better.

Prentiss asked if there was a homeowner in the area at the end of the easement that would be affected by this change. It was confirmed that there was no one in that area.

McCann said it would allow the connection to town-owned land.

Henry said that he agreed with this from a practical standpoint to have the access changed. The only concern is the drainage structure will be constructed before they utilize their rights. The right to allow vehicular access to the Fox Run open space is very slim, but he asked if the drainage could be tweaked to be further to one side or the other of the access easement so they do not have to relocate the structure.

Henry asked if they could limit the work line to where the easement bends. If they were to utilize this for vehicular access, the farther away from the water resource area the better. If utilized, it would probably be a pedestrian access way.

Henry said that while he likes the alternative plan, what if the road is not accepted as a public way? If they get the access easement to the open space, they would want to make sure of that.

Prentiss said that there is no reason that this cannot happen. It meets the criteria to be accepted by Town Meeting.

Zilinsky said that she liked this better than the original plan. She questioned a water source on the plan. It was confirmed that the area was not a wetland. She did not have a problem with this. She felt it was more controllable.

Smith asked McCann if she could go into more detail regarding the potential legal question.

McCann explained that the present right-of-way was not granted, it was reserved. When Mr. Healey conveyed that, he was reserving to himself and his heirs a right-of-way over this parcel that is 50-feet wide. He did not, however, have the right to go across to the other side. That is what has carried through. The Town only got what the person had when they did a tax taking. The Town only got a right-of-way over strips of land. He never had the right to go over to the other side. The use of this right-of-way would be considered an overloading of the easement. When created, a person did not have a right to go over there. The owner of the land that was burdened did not think people would be crossing over.

Smith felt the alternative plan was better.

Prentiss said that in his mind it constituted a minor modification due to the change of the structure. Either way, they can decrease some of the burden of the applicant with the signing of the mylar with a brief approval. He is not a fan of signing a mylar or endorsing a plan to move forward as a use over another plan.

McCann said that this was not a modification of the subdivision. The layout of the road and utilities is identical. The right-of-way is held by the Town. It does not change the subdivision.

Cameron said that this was a cleaner way to do it. It could also be done with easement language.

Henry pointed out a change to the grade.

Cameron said that the grading shown on the plan is schematic to show the buildability of the lots.

Prentiss asked if the Board had any other questions.

Zilinsky asked what they would do if they did determine this was a minor modification to the subdivision plan? Would they sign the original plans and then come back?

Prentiss said that the zoning book would make that decision. If we approve this with staff approval, it would trigger it to become a minor modification.

McCann pointed out that this was a subdivision. This is not under the zoning bylaw. There is no minor or major modification to a subdivision. This falls under the Subdivision Rules and Regulations. There is no change to the subdivision.

Prentiss said that if any drainage changed, it triggered a modification to the subdivision.

McCann said that they are not proposing to change the drainage. That is a utility. That is not being contemplated here. Changing the right-of-way location is not a change in the subdivision.

Henry said that the Planning Board agrees that this is a better plan. He felt it was not wise to sign mylars and send them along to the Selectmen. He pointed out that the Planning Board does not like when other Boards hand them these types of things. We want to provide the Board of Selectmen with our opinion. Let the Selectmen decide. If there is a movement of the drainage, it would be a modification. You have a recommendation to the Selectmen to relocate the easement.

Matt Duggan, Town Meeting Member. Duggan asked about the easement across 321R Maple Street. McCann responded that that is not changing at all.

Prentiss said that this is the easement that extends beyond the roadwork. It does not make for a good plan. It is a useless easement. It is logistically a better spot for the Town and the developer.

Duggan asked about access to the Fox Run open space area as well as the Danvers Rail Trail. He asked if the easement could be fenced in.

Prentiss said that it cannot be used by any of the homeowners where it crosses their property. They cannot put something on it. It is access for the Town to use for water drainage.

Duggan asked if people could walk through this. There is a paper street in his neighborhood that has been fenced. Can the property owner put up a fence in the future?

Henry said that the easement cannot be obstructed.

Prentiss said that he would recommend to move forward with endorsing the alternate plan pending approval by the Board of Selectmen. He felt it was more like an administrative detail. It would give the Board more flexibility. It would reduce the number of times the applicant would need to come back to the Board.

Henry said he wanted to review the regulations. He recommended signing the original mylar only.

Prentiss said that the letter of recommendation would tell the Board of Selectmen that the Planning Board wants to do this. If approved, we would only have to sign the alternate plans. It gives the Planning Board flexibility as well as flexibility to the applicant.

Henry said that if the movement of the right-of-way is ministerial, they would only sign the alternate plans.

McCann said that they would not have to meet again. She confirmed that they were going to make a motion to send a letter of recommendation to the Board of Selectmen and if the Board of Selectmen move to accept that the criteria has been made to relocate the easement, you could execute the alternate plan without the need of another meeting.

Zilinsky said she was fine with this. She was fine with the original as well. She said to let the Board of Selectmen know that the Planning Board thinks it is a cleaner way to do the right-of-way.

Prentiss said that at the last Board of Selectmen meeting, someone stood up and said that Boards do not talk to each other. This is an opportunity where if the Board of Selectmen have a recommendation from the Planning Board, they will be more at ease.

Prentiss said he would be happy to attend the meeting.

McCann said that would work for them. She would suggest that both plans are signed and held in escrow by the Planning Department.

Zilinsky said they are sending their recommendation to the Board of Selectmen. She would be uncomfortable signing the alternate plans until the Board of Selectmen reviewed this.

Prentiss said that the Board members can come in at any time.

McCann confirmed that they would endorse the plan with the right-of-way in its current location. They would send a letter of support for the relocation to the Board of Selectmen. If the Board of Selectmen agree, they will stop in and sign the mylar showing the relocation.

MOTION: Zilinsky motioned to send a letter to the Board of Selectmen indicating the Planning Board supports moving the Town right-of-way easement to an angle off the cul-de-sac. Smith seconded the motion. The motion passed by unanimous vote.

ADJOURNMENT



MOTION: Zilinsky moved to adjourn. Smith seconded the motion. The motion passed by unanimous vote.

The meeting adjourned at 8:45 a.m.

Respectfully submitted: Francine T. Butler

These minutes were approved on January 14, 2020.