

PLANNING BOARD  
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Christopher Cooper, Chairman  
Robert Moitozo, Vice Chair  
Edward Bertozzi  
Tomas Ennis  
William Costa Sr.  
Jake Kramer  
Tish Vadnais  
Lynne Ferreira, Assoc. Mbr.  
Daniel Roach, Town Planner

**Meeting Minutes  
August 19, 2020  
Remote Meeting  
7:00 PM**

Present: Christopher Cooper, Robert Moitozo, Edward Bertozzi, Tomas Ennis, William Costa Sr, Jake Kramer, Tish Vadnais, Lynne Ferreira, Associate Member, and Daniel Roach Town Planner.

Absent:

Mr. Cooper began the meeting with the Pledge of allegiance at 7:03p.m.

**Form A**

**1. Potenza – 21 Summer Street – 20-08A**

Ms. Rachel Smith from Otis Dyer's office was present.

Mr. Cooper stated that during the last meeting there were some questions about whether the upland could be accessed from the frontage that was available. We asked to get an opinion of Town Counsel and to do some research.

Ms. Smith spoke in regards to other properties in town that were similar to what is being proposed.

Mr. Cooper stated that in terms of what I see we have 2 options. 1) Gates – VS – Dighton Planning Board in which case the court upheld the Planning Boards autonomy to deny a lot with accessible frontage, access to the back land. Several examples were given. 2) in the past we have allowed lots similar to this, if not identical, the ability to build based on some upland near the front of the accessible frontage to the site. How we have to form the question is we are not bound by the past but is it fair to have it change now. Any time we have a grey area in our Zoning bylaws it immediately opens ourselves up to things like this. Where it's very unclear. Regardless of what we decide we need to take a look at how we address this because the options are going to change with every different combination of the Planning Board members we have.

Mr. Bertozzi stated he would like to thank Ms. Smith for all the information she had given us and for her clear and well-reasoned arguments. The whole Form A procedure is actually part of the MGL that give Planning Boards control over subdivision. The ANRs are not something that are completely separate from what Planning Boards do. The way the Form A section is designed is we have to find it's not a subdivision. Gave the definition of a valid Form A. Went over the Gifford case and the Dighton Planning Board case. Went over a case in Sudbury where the planning board denied due to wetlands as frontage on 6 lots. The court said there were no physical impediments and the lots are accessible from a public way. However, there are wetlands which may interfere with access from the front of the lot to the back of the lot unless alteration of the wetland is permitted by the Conservation Commission or by DEP. No one had done anything with regards to approval to alter the wetlands. It was possible to alter wetlands to get to the back and the town had not shown that it wasn't possible or practical. The court said whether or not this

frontage is really usable hasn't been decided. So, it depends upon decisions from other boards. We feel that the Planning Board hasn't shown that the access is impractical. In another case he explained that there were 12 lots and 8 of them had wetlands across the frontage. The solution was going to be a common driveway that would connect from a private road and the private road would have to be extended. The court said we discussed all the cases and said that the primacy of the efficient vehicular access is the pivotal criteria and the way the distinguished the case is it's helpful to turn to first principals inserting the object of subdivision control law. A task of Planning Boards to ensure by regulating design and construction safe and efficient roadways to lots that do not otherwise have safe and efficient access to an existing public roadway. He went on to describe the common driveway that was proposed in this case, the adequacy of such a road system, the street and the proposed ANR plan shows a subdivision. The Planning Board in the case described declined to endorse that plan. Let's look at what our Town Counsel said as far as whether we can turn this down. Town Counsel's opinion is "This can be a tricky question. Basically, if the roadway on which the project fronts is adequate the question is whether the frontage is compliant. Then you have to endorse. Even if the actual access to the lot is elsewhere. Unless the Zoning bylaw defines frontage in a way that requires frontage to be the place where the access is required." Read the Zoning Bylaw for frontage. Went on to explain that it's reasonable for the Planning Board to interpret the highlighted portion, having access to a public way, to require frontage be such a character that it is able to provide actual frontage. Read a portion of 81M in the MGL for reasons to have a valid, useful, practical access. My own opinion I agree with Mr. Cooper and Ms. Smith. I don't think it would be fair to change this around completely right now. I think the best thing to do is change the Zoning Bylaw if we come down on the side of requiring that the access be from the frontage, or that access be possible from the frontage. Focusing on safety. We do regulate driveways. It needs more study and discussion. Mr. Cooper stated that when we talk about cleaning up the bylaw the thing that comes to mind is the situation, we had on Firetown Road. This does have to be cleared up because we are inviting situations like this if we continue to leave it in a grey area.

Ms. Ferreira stated that I started looking at plans that we have done as a Planning Board. We have one from February 2020. It would be doing a disservice to change it right now and hold this up. I don't think it would be fair. I came across a particular lot on Summer Street. There are two lots here, 21 & 33 Summer Street, and lot 2 I would like to see the old lot lines brought in.

Ms. Smith asked are you talking about the old house, which would be part of lot 1?

Ms. Ferreira stated in 1971 when Manuel Botelho sold off lot 1 he accepted from that sale lot 2. Which is on the current deed. Legally there are still two lots there. Even though it can be treated as one for zoning and taxation purposes. When the Potenza's put both properties on the deed they still list them as two lots. So, legally there are two lots there.

Ms. Smith stated we will do that.

Mr. Ennis made a motion to endorse the plan with revisions as requested.

Mr. Kramer seconded the motion. Roll call vote; all replied aye. Motion passes.

## 2. Graustein – 234 Tremont Street – 20-09A

Ms. Rachel Smith from Otis Dyer's office was present.

Ms. Smith presented plans.

Mr. Bertozzi stated if anything, in my mind, this one is worse because it is kind of a rat tail. It is useless access. The new lot 2 should not be allowed to use the gravel driveway unless they all come before the Planning Board and get a special permit for a common driveway.

Ms. Smith stated she agreed and the lawyers are working on the easement. The new lot 2 will have to make its own driveway over the easement. Unless they all agreed to make it into a common driveway. In which case they would have to come to the board.

Mr. Bertozzi stated that he requests that you beef up the requirements of the access and utility easement. Is it level?

Ms. Smith stated at the moment it's a very level hay field.

Mr. Bertozzi asked is it sufficiently located?

Ms. Smith stated I think there would be no problem putting a proper driveway in that location.

The board discussed if they require evidence that an easement that has been accepted by both parties. The board agreed that they do not require it.

Ms. Smith stated that both lot 1 and 2 are owned by the same person. They are having an attorney write up the easement. There will be a legal easement recorded when they sell lot 1 or 2. Generally the easements have been written after the Form A have been approved.

Mr. Cooper asked how wide is the strip that goes from lot 2 out to Tremont Street at its narrowest point?

Ms. Smith stated 50'.

Mr. Moitozo made a motion to endorse the plan.

Mr. Kramer seconded the motion. Roll call vote; all replied aye. Motion passes.

### 3. Azevedo – County Street – 20-10A

Mr. Ennis recused himself.

Mr. Robert Anthony Perruzzi of Mount Hope Engineering was present.

Mr. Perruzzi presented plans.

Ms. Ferreira asked is there any issue with having 2 dwellings on one lot and the frontage is shrinking?

Mr. Moitozo stated one house is from 1875 and one is from 1940. Our zoning did not go into effect until after 1940. They are exempt. If it was a duplex, they would have to have 300' of frontage and 120,000 sq. ft lot size.

Ms. Ferreira asked if both houses were used?

Mr. Perruzzi stated one is used as a guest house.

Mr. Bertozzi stated that he noticed on County Street you stated public width varies. Why don't you say that on Old County Street?

Mr. Perruzzi stated the status of Old County Street is questionable. It is shown on the 1958 alteration but they don't list what the status of it is. The board did approve a Form A further down on Old County Street 2 lots over from this one in November 2001 for 176 County Street. The house was built in 2006.

Ms. Ferreira stated when they split up Francis Farm 113 County's Street frontage is on Old County Street. That was back in the early 2000s.

Mr. Bertozzi stated the plan doesn't say it's a public way.

Ms. Ferreira stated that she could not find anything on record showing it as abandoned.

Mr. Perruzzi stated it provides access to 3 lots.

Ms. Ferreira stated I know that recently where frontage on Old County Street was counted as frontage to create a lot.

Mr. Perruzzi stated it currently provides access to 3 separate building lots and 2 vacant lots. 172, 166, and 176 County Street all get their access from this section of Old County Street. There's more than 1 Old County Street. There are some further to the North East. This one in particular provides access to 3 lots. It is paved all the way and it was used up until 1958 when they straightened the hook.

Mr. Cooper asked if it was maintained by the town?

Ms. Vadnais stated I don't think it is.

Mr. Moitozo stated that is a question for the Town Clerk.

Mr. Costa stated that on the drawing you show utility poles going on Old County Street. Is that true?

Mr. Perruzzi stated yes, there are utility poles on both.

Mr. Cooper stated the only question is if we are comfortable with Old County Street as a public way that is accepted by the town.

Ms. Smith stated she had a list of abandoned roads. On County Street the only 2 pieces that are listed is a piece by 118 where the road was straightened near the 4-way intersection and then another piece where the town voted in 1965 to abandoned a portion of County Street at Maple Lane. There's nothing about the portion your discussing as far as I know it is public.

Mr. Bertozzi read the bylaw for exemptions of a lot being divided having frontage on a public way, a

subdivision plan, or a way existing when subdivision control law came into effect in the town. He drove Old County Street yesterday. It is flat, paved, it wasn't full of holes, there are houses on it, and its Old County. It's been there before subdivision control law became effective.

Mr. Costa made a motion to endorse the plans.

Mr. Kramer seconded the motion. Roll call vote; all replied aye. Motion passes.

### **Public Hearings**

#### **1. 90 Pond Street – Rehoboth Renewables – 19-01 Solar, 19-03 SPA, 19-04 GWSP**

Mr. Roach he had not received any updated plans from the applicant. I have reached out to the engineer, but did not hear if they would be here tonight.

Mr. Mark Carden of the Boy Scouts was present.

Mr. Carden stated that the engineer has been trying to reach out to the Fire Chief regarding the road on the outside of the fence.

Mr. Ennis asked if we had received a response from the Fire Chief as to why he wants a road around the entire site, but nothing in the past?

Mr. Roach stated he had spoken to him and it is that after seeing different sites like this and seeing different situations where they needed access or a road like this and didn't have it.

Mr. Cooper stated that the Fire Chief is not here to discuss this. He is the only one qualified to make recommendations to this. We should wait to hear what he has to say.

Mr. Roach will contact the Fire Chief and ask him to come to an upcoming meeting.

#### **2. 180 Pleasant Street – Pleasant Investments – 20-01C**

Mr. Rob Davis of InSite Engineering was present.

Mr. Davis presented revised plans based on comments made by Fuss & O'Neil and the Planning Board.

Mr. Ennis stated there should be no fill removed from the site.

Mr. Davis stated there will be a lot of fill material required on site. This won't be a problem.

The board discussed the temporary grading easement and it being on Ms. Veader's property.

Mr. Davis stated that we have permission to go on the property for the next 100 years to do work on it. It's considered a temporary grading easement.

Mr. Costa stated by her signing the document she's accepting that portion of the slope to be on her property?

Mr. Davis replied absolutely.

Mr. Bertozzi asked if the slope erodes who has to fix it?

Mr. Davis stated that just like any other road in town if the road bed is compromised it would be up to the town to fix it.

Ms. Vadnais made a motion to approve the Form C.

Mr. Kramer seconded the motion. Roll call vote; all replied aye.

Mr. Cooper asked Mr. Davis to go over the waivers and bond requested.

Mr. Davis went over the waivers requested. We will be requesting a covenant.

Ms. Vadnais amended the motion to include the covenant and waivers as discussed.

Mr. Kramer seconded the motion. Roll call vote; all replied aye. Motion passes.

### **New Business**

#### **1. 242 Anawan Street – Discussion**

Mr. Roach stated that he had not heard anything back or received anything from anyone who we sent the letter to. There was some discussion between Town Counsel and the Zoning Enforcement Officer.

Mr. Moitozo asked what the date on the letter was for them to get back to the board?

Mr. Roach stated yesterday, just to respond.

Mr. Moitozo stated they ignored us. What do we do now?

Mr. Bertozzi stated how about having our Town Counsel send them a follow up letter.

Mr. Roach asked do you want me to work with Town Counsel on a sterner letter?  
Mr. Bertozzi stated yes.  
Mr. Bertozzi made a motion to have Mr. Roach work with Town Counsel.  
Mr. Costa seconded the motion. Roll call vote; all replied aye. Motion passes.  
Mr. Ennis asked does he send the letter after it is written or are, we going to review it?  
Mr. Bertozzi stated we are going to review it.  
Mr. Bertozzi made a motion to have Town Counsel send a letter on our behalf.  
Mr. Costa seconded the motion. Roll call vote' all replied aye. Motion passes.

### 2. Bond Reduction – Eastwood Estates Phase I

Mr. Roach explained the bond reduction request.  
Mr. Costa made a motion to reduce the bond to \$18,700.00.  
Mr. Ennis seconded the motion. Roll call vote; all replied aye. Motion passes.

### 3. Subdivision Control Law – Additions - Discussion

Mr. Roach explained what had been discussed previously. Dead end roads, adding maintenance for retention ponds, trees, and a legal review for recording. They have been adjustments made and sent to Town Counsel for review. I will share any comments I get back with the board.  
The board discussed the current subdivision control laws on the website. They are missing some information. They will be looked into.  
The board discussed having Ms. Rachel Smith come into a meeting and discuss the things discussed in regards to access and legal frontage. What we would want that to look like if we decide to incorporate that into zoning. This item will be on the next agenda for discussion.  
The board discussed the proposed change of a 100-year flood zone to 500 - years.

### 3. Planner Update

Mr. Roach stated that Eastwood Estates phase I is near completion. The top coat has been put down on the roadway.  
The board spoke in regards to the proposed retention pond maintenance bylaw.  
Mr. Bertozzi asked the board to take some time and think about what we are requesting with regards to changing our bylaw on frontage. He gave examples of what it could say.  
Mr. Cooper asked is this something we could make subject to a special permit?

### **Adjournment**

Mr. Costa made a motion to adjourn at 9:06 pm  
Mr. Moitozo seconded the motion. Roll call vote – all replied aye. Motion passes.

Respectfully Submitted

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Christopher Cooper, Chairman

  
Robert Moitozo, Vice-Chairman