



TOWN OF WESTON

Planning Board Meeting May 6, 2020

Document Prepared by Dana Orkin

Meeting called to order at 7:07 PM

Planning Board Members	Present	Staff Members	Present
Tony Flynn (TF) - Chair	yes	Dana Orkin (DO) - Asst. Town Planner	yes
Leslie Glynn (LG)	yes	Dave Conway (DC) - Consulting Civil Engineer	no
Steve Oppenheimer (SO)	yes	Kim Turner (KT) - Consulting Landscape Architect	no
Alicia Primer (AP)	yes		
Sue Zacharias (SZ)	yes		

Italics indicate formal action taken

1.0 Public Comment

None

2.0 Public Hearing

2.1 13 Pigeon Hill Rd. – Scenic Road Site Plan Approval Amendment, Unpermitted Tree Removal

Representation: None

Overview: DC stated that Kevin O’Leary was finishing the drainage report for homeowner and would send it to DC that week. Stated deadline as receipt in time for review at the May 20th meeting.

Documents:

Discussion:

AP stated that PB should put a hard deadline for the drainage report, to be reviewed for May 20th, otherwise fines would be assessed by the Building Inspector.

TF stated sympathy during the pandemic but that the report had to be completed and sent to DC before the May 20th meeting.

Public Comments:

Emily Curry, 3 Pigeon Hill, stated that she would appreciate progress shown at the next meeting.

Dianne Butt, abutter, stated that process had been long and that she would like resolution soon.

Terry Eastman, 50 Pigeon Hill Road, asked if PB had passed over Pigeon Hill discussion.

TF stated that had been the first thing on the agenda and that the discussion had been continued to May 20, 2020.

Public hearing continued to May 20, 2020

3.0 Decisions

3.1 Nike Basketball Camp, Cambridge School of Weston – Special Permit, Day Camp

Representation: Brendan Smith, Camp Director

Overview: DO stated that he had noted the drop off location in the wrong location. Stated that actual drop off was at the Health and Fitness Center, instead of outside of the Gymnasium.

Public Comments:

None

LG moved to approve the Special Permit for Nike Basketball Camp with the changes noted. AP seconded. All in favor.

4.0 Other Business

4.1 Legal Guidance on RGFA Trigger Reviews

Representation: Katherine Laughman, KP Law; Jon Witten, KP Law

Overview: TF presented some background on so-called 5999 RGFA houses and how some developers and owners might build to just below the 6000sf trigger to avoid the Site Plan Approval review by the PB. Stated options for “closing the loophole,” including inclusion in RGFA calculation of total building “bulk” available for “finishing.”

Documents:

- [Review of “5999” Homes Presentation dated 5/6/2020](#)

Discussion:

Witten stated that some towns utilized Special Permits, which might be triggered by tree removal, RGFA changes, etc. He stated that Site Plan Approval process did not allow the Board to deny a proposal, where Special Permit would.

AP stated it would be best to have clear regulations so the topic would not be open for interpretation.

Laughman stated the history of 144 Beaver property: a home was built under 6,000sf, later the owner cleared the site and built a 23-foot retaining wall along abutters’ yard. It was a phased construction process where the owner eventually built the house over 6,000sf. The PB at that time wanted to know if they could look at property *de novo* and request the removal of the retaining wall, construction of which would not have been approved under normal review process. The site grading, engineering and landscaping were normal parts of the Site Plan Review process, that the PB would customarily have taken into consideration. Stated that 2011 Land Court case determined that PB did need to consider pre-existing conditions and conduct Site Plan Approval review from *de novo*. Stated that PB signed off on the eventual settlement reached between neighbors.

SZ stated that the three car garage constructions with unfinished attic spaces above were likely scenarios in which Site Plan Review process was purposefully avoided.

TF asked how PB could determine if the situation was intentional.

Laughman stated that if there were plumbing or electrical work built in the attic space, that would indicate a clear intent to finish the space. Stated that change of ownership from original and passage of time might both lessen the appearance of intent to bypass review.

Witten stated intent was not material to discussion. Once construction exceeded the 6,000 sf it would be subject to Site Plan Review regardless. Stated that if construction were done without a building permit, there would be some sort of punishment. Stated he would not look behind the motives of the applicant.

Laughman stated the 144 Beaver case was a clear example of an owner trying to avoid the Site Plan approval process. Stated the PB could have strict conditions in their Site Plan approval depending on the situation

TF stated the two judges of 144 Beaver found an intent to avoid the Site Plan review process.

Laughman stated that the Court ruled that the PB would look at the site in its original condition, or *de novo*.

AP stated she was uncomfortable trying to interpret the motives of the applicants.

SO stated that he less concerned about a home that was built 20 years ago that exceeded 6000 sf today, than he was about a house that was built in the last few years that came back for an RGFA increase.

Laughman stated the PB had the discretion to condition the Site Plan Approval as to what the PB found appropriate under the standard conditions, which would be different according to each property.

TF asked what the Planning Board felt about changing their RGFA calculations.

AP stated it was a lot to digest and there could be some unintentional consequences.

SO stated that unfinished space should be counted into the RGFA.

LG stated that unfinished spaces could not be counted in the RGFA calculations.

SO stated there was the same issue with the basement space.

LG stated livable ceiling heights were calculated at least 6-feet high.

LG stated that she was interested in researching Witten's suggestion of tying Special Permits to site clearing.

Public Comments:

Alex Selvig, PB candidate, asked if the PB would be open to charges of being arbitrary and capricious.

Witten stated those attacks were always possible. As long as the PB decisions were rational, the lawyers would be able to defend the PB against those charges.

4.2 Fire Department Driveway Requirements

DO stated that the Town Planner of Lincoln MA stated that they allowed 12-foot driveways under certain circumstances.

LG stated that she reached out to Wayland and Sudbury. Stated that they allowed 12-14 feet depending on different conditions related to the driveway use, proximity to a hydrant, grade changes, length of driveway, and availability of a turnaround space at the end of the driveway. Suggested that two members of the PB meet with the Fire Department to discuss Fire Department's conditions.

SZ asked if the Fire Department had the final say on driveway widths.

LG stated they did, from a safety standpoint.

TF stated that there was confusion from applicants on driveway width requirement. Wondered what sites could accommodate 12-foot driveways.

LG and SO will have a conversation with the Fire Department.

4.3 Letter to DPW regarding Merriam Street Sidewalks

TF stated original plans for letter to DPW, but he and LG thought it would be easier to have a zoom conversation.

LG stated that was a good idea as long as the PB agreed.

SZ stated agreement.

4.4 Chairman Statement Update

TF stated that he was withdrawing from the upcoming PB election. Stated that he had talked with Town Manager Gaumond, who recommended that he set transition to the end of his term.

AP stated that TF's one year term would be over before next meeting since his election was May 15, 2019.

TF stated he would confirm with Leon Gaumond but he disagreed.

4.5 Town Planner Recruitment Update

TF presented his compilation of PB requirement rankings for the prospective Town Planner.

TF presented AP's additional qualifications for Town Planner applicants.

TF would ask Leon Gaumond about how to interview the applicants remotely.

4.6 Approve Minutes

SO moved to approve the [10/2/2019](#) Minutes with the changes noted. SZ seconded. All approved.

SO moved to approve the [11/6/2019](#) Minutes with the changes noted. LG seconded. All approved.

AP moved to approve the [11/12/2019](#) Minutes with the changes noted. SZ seconded. AP, SO, and SZ approved. TF and LG abstained.

AP moved to approve the [11/20/2019](#) Minutes with the changes noted. SZ seconded. All approved.

LG moved to adjourn, SZ seconded. All in favor, none opposed.

Meeting adjourned at 9:12 p.m.