

Town of Franklin

355 East Central Street
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PLANNING BOARD

December 19, 2022 Meeting Minutes

Chair Gregory Rondeau called the above-captioned meeting held in the Town Council Chambers at 355 East Central Street, Franklin, MA, to order this date at 7:00 PM. The public had the option of attending the meeting live at the Town Hall, dialing into the meeting using the provided phone number, or participating by copying the provided link. Members in attendance: Gregory Rondeau, Chair; William David, Vice Chair; Beth Wierling, Clerk; Rick Power; Jennifer Williams; Jay Mello, associate member. Members absent: None. Also present: Amy Love, Town Planner; Michael Maglio, Town Engineer (via Zoom); Matthew Crowley, BETA Group, Inc. (via Zoom).

7:00 PM Commencement/General Business

Chair Rondeau reviewed the Zoom platform call-in phone number and the Zoom link which were provided on the meeting agenda. The meeting was audio and video recorded.

A. Partial Form H: 340 East Central Street

Ms. Love reviewed that the Planning Board approved a Special Permit and Site Plan for 340 East Central Street on October 5, 2020. The applicant submitted a Partial Form H for the Site Plan. This is the second Partial Form H for this site. The Planning Board approved a Partial Form H on October 4, 2021, for the front building only. The current Partial Form H includes the back building and parking areas. BETA reviewed the as-built plans and submitted a comment letter.

Mr. Crowley stated that BETA performed a performance observation several weeks ago primarily focused on the area of Building D at the rear of the commercial development. He stated that all safety items appear to be addressed at this time. He noted several outstanding issues including but not limited to pervious paver sidewalk around the backside of the building has been extended to the dumpster area, electrical vehicle station has not been installed, only a portion of the residential only parking signs have been installed, dumpster enclosed material has been revised, and there appears to be no construction fencing between the commercial area and residential area under construction.

Mr. Maglio stated that Mr. Crowley's report covered everything; he has nothing else outstanding other than what Mr. Crowley mentioned.

Ms. Wierling asked if the comment about the construction fence needing to remain open is accurate. Mr. Maglio stated that the access is through an easement that the Town has and it gets weekly use as well as some delivery trucks. Mr. Joseph Halligan, site owner, noted that the silt fence was knocked down and all rubbish has been picked up. He stated that it has been difficult due to prevailing winds that run through the site; they are on top of the trash daily. Mr. David stated that he conducted a site visit and noted the silt fence was repaired and the trash is an ongoing problem due to winds; otherwise, everything seems to be okay. He stated that the electrical charging conduit should have a safety cone over it. Chair Rondeau stated that Mr. Halligan should keep up with the trash, and it came out nice.

Motion to Approve the Partial Form H: 340 East Central Street. Rondeau. Second: Williams. Vote: 5-0 (5-Yes; 0-No).

B. Partial Form H: Panther Way

Ms. Love reviewed that the Planning Board approved a Special Permit and Site Plan for Panther Way on June 29, 2020. The applicant submitted a Partial Form H for the Site Plan. BETA reviewed the as-built plans and submitted a comment letter.

Mr. Crowley reviewed his Site Observation Report letter dated December 12, 2022. He stated that the list of items is a little more substantial on this item. He stated that since the report was done, he has received several updates in the form of an email and some pictures from a member of the development team. He highlighted some of the items completed since the report was issued including that the curbing has been completed around the perimeter of the site and the site entrance, all the lighting has been completed or repaired, stop signs and accessible parking signs have been installed, the walkway to the building entrance at the top of the site has been completed, and the catch basins along the site driveway have all been raised to the binder course grade. He stated that the following remain: top coat pavement, front side of site missing guardrail and fencing along retaining wall, and vertical granite curb along entire driveway has been revised to vertical concrete curb with the exception of what is within the Town right-of-way. He stated that bollards were installed along the front of the building; however, there are some significant gaps. He stated that there are some considerations for the fire chief to give some input. These and all other items are noted in the report.

Mr. Maglio stated that he reviewed Mr. Crowley's report and he had similar concerns regarding the missing guardrail and curbing which seems as though it may have already been taken care of. He stated that he is not concerned about the cascade drains. He noted concern with the fire hydrants.

Mr. David stated that he saw the site today. He stated that there is a lot of work going on; they are finishing the stormwater grates and there are a few sections of concern with the guardrail on the upper lot. He stated that the bollards are spaced rather far apart. He noted concern regarding the retaining wall coming from the upper to the lower. He stated that the building looks nice; there are just some things that need to be cleared up.

Planning Board members asked questions and made comments. In response, Mr. Brad Chaffee, applicant, discussed where the buses and cars would be parked; currently, the buses are parking and overhanging the wall temporarily until the site is finished. Chair Rondeau stated that he went to the site; there are some items that still need to be done. Discussion commenced regarding where the buses are parking currently, where they will be parking when the site is finished, and where additional bollards should be located. Mr. Chaffee reviewed items that he expects will be finished before the next Planning Board meeting. Ms. Love summarized that the fire hydrant, fencing, and guardrail are the biggest items of concern. She stated that these could be conditioned on the Partial Form H and the other items would come in on a Final Form H. Chair Rondeau asked that it be confirmed that the backfill on the curbing is done.

Motion to Accept the Partial Form H: Panther Way, with the review of the letter from the fire department accepting the relocation of the fire hydrant, some additional guardrail, and backfill behind the curbing Wierling. Second: Williams. Vote: 5-0 (5-Yes; 0-No).

7:05 PM

PUBLIC HEARING – *Continued*

Subdivision Rules & Regulations

Section 300-13 Other Improvements

Documents presented to the Planning Board are on file.

Ms. Love stated that Town Attorney Mark Cerel was present at tonight's meeting. She stated that at the last meeting the Planning Board seemed satisfied with the proposed changes; however, the Planning Board asked that it be run by the Town Attorney. She discussed that in regard to sidewalks and landscaping being installed in the particular lot being purchased prior to the occupancy permit for the lot, both of the revised conditions had language that it would be based on the occupancy permit. She stated that she has been advised that is not possible as you cannot withhold an occupancy permit. She stated that, therefore, in talking with Attorney Cerel, they came up with two different ideas. However, Mr. Maglio does not like the proposed wording for the sidewalk. She stated that as far as the wording regarding the trees, that will work.

Ms. Wierling commented on the new proposed tree wording. Planning Board members and Attorney Cerel discussed the correct language as a word was missing. Discussion commenced regarding the wording as the Planning Board still wants to have the trees in the subdivision. Mr. Mello stated that regarding the sidewalk, the grade should continue across the sidewalk and be an accessible path along the driveway. Mr. Maglio stated that his initial reaction was the same point that Mr. Mello just made. He stated that the biggest concern is that there is an accessible path and the path crossing the driveway meets ADA requirements.

Attorney Cerel discussed that the occupancy permit could not be withheld for failure to plant trees; however, it probably could for driveway safety. Mr. Maglio stated that on a lot of the building permits and certificates of occupancy, Building Commissioner Gus Brown sends them to him to sign off on to verify they meet the water and sewer requirements or have any outstanding issues. Chair Rondeau suggested maybe this could be done for the sidewalks and aprons to make sure it is safe for whoever goes in there. Ms. Love read aloud suggested wording for the sidewalk section. Mr. Maglio provided his recommendation. Ms. Love reviewed the Planning Board's original sidewalk issue. She stated that they wanted to have the driveway/sidewalk done before the person moves in; however, they have been told they cannot do that. So, she does not know if any change would be made to this; they would just stick with the current regulation. Mr. Maglio suggested it may be communication between the builder and the homeowner. Mr. Mello confirmed that Attorney Cerel stated that occupancy permits can be withheld for sidewalks as it was public safety.

Chair Rondeau reviewed that it takes a developer months to build a house and there is plenty of time to put in the sidewalk; it is up to them to get it done properly. He suggested that they leave it as it is written. He suggested that the Planning Board will have to come back to the tree section for the language. Ms. Williams reviewed language for the tree section. Discussion commenced on the tree language. Attorney Cerel explained that if the Town is eventually going to accept the roads as public roads, then the Town has an independent interest in having them tree lined. Ms. Love suggested continuing the public hearing to the next meeting so the Planning Board could review the final language.

Motion to Continue the public hearing for Subdivision Rules & Regulations, Section 300-13 Other Improvements, to January 9, 2023. Wierling. Second: Williams. Vote: 5-0 (5-Yes; 0-No).

7:10 PM

PUBLIC HEARING – *Initial*

515 West Central Street

Site Plan Application

Documents presented to the Planning Board are on file.

Motion to Waive the reading. Rondeau. Second: Wierling. Vote: 5-0 (5-Yes; 0-No).

Mr. Edward Cannon, attorney on behalf of the applicant; Ms. Amanda Cavaliere of Guerriere & Halnon, Inc.; the applicant (via Zoom); and Mr. Josh Kline of Stonefield Engineering & Design (via Zoom) addressed the Planning Board. Mr. Cannon stated that they have not been in front of the Planning Board since May 2021 when the Planning Board denied the Site Plan application. They appealed on grounds that this is a Dover Amendment use. He stated that he appreciates the creativity of trying to work out a resolution; hopefully, they have been able to do that. He stated that the court, by agreement, sent them back the Planning Board to land on an area that works for both to address the concerns. He stated that the applicant previously had met about all the concerns BETA had raised. The applicant has returned to where they left off in May 2021 with the same plan. He noted that this is a new Planning Board since then. He stated that the applicant provided a new public notice.

Ms. Cavaliere provided a review and stated that this was part of an original site that was separated over time into three lots with a private way. Parcel A is the private right-of-way with three lots off it: Wendy's off Rt. 140, Midas in the rear, and the subject property to the right. She reviewed the provided plans and discussed that the cul-de-sac was never intended to be constructed. It is now a three-lot subdivision with a private way. The subject parcel is about 1.3 acres. She stated that they are proposing a driveway that goes into the facility for a two-story day care with a 5,200 sq. ft. footprint totaling 10,400 sq. ft. She stated that there is also a 3,790 sq. ft. play area for the children. She stated that there are 33 parking spaces with crosswalks and a 20 ft. wide pervious paver access road for the fire department. She stated that there is dumpster and trash removal; she explained that the trash trucks will come in and go around the building and stay out of the area for the traffic of the students and parents for drop off. She stated that snow storage, emergency access, and trash removal have been addressed.

Attorney Winter stated that there are probably two other elements that they are going to speak about as this public hearing progresses. He reminded everyone that they have engaged a traffic consultant; they have a peer reviewer who will be chiming in. He stated that he has a draft of that report which they just got before the weekend. The peer reviewer was not able to finalize the report; so, they will not be able to get into that tonight. The other element that will be discussed is some operational concerns, not just the traffic and parking arrangements, but operational concerns about phasing up the occupation of the day care.

Ms. Love stated that a draft of proposed conditions was provided which the Planning Board should review to start the conversation about what would satisfy the Planning Board. Chair Rondeau asked if there was a way to get the Planning Board a clean version of the plan so everyone can see the plan clearly including the traffic pattern, asphalt, and parking. Ms. Cavaliere stated that they have a color version that they can send over. Mr. Mello requested labelling the streets on the plan.

Mr. Maglio stated that he has not reviewed the plans since the last time they were before the Planning Board. He does not remember any outstanding issues other than those brought up by the Planning Board.

Ms. Wierling stated that seeing the traffic study and some of the other information will help guide this discussion. Ms. Williams stated that the applicant stated that the cul-de-sac is not planned to be built; however, the draft conditions talk about the Town having concerns about queuing and drop off with regard to the cul-de-sac. She stated that she is confused as to why the cul-de-sac would be mentioned if it was never going to be built. Ms. Cavaliere stated that the information was for the new Planning Board members. Discussion commenced regarding the use of the cul-de-sac language possibly being changed.

Chair Rondeau stated that the draft was written and broken into three of four pieces. He would like to see 60 percent of the building run six to nine months and then do a second piece of the puzzle, rather than having four pieces of the puzzle. He said that the first couple of months they are just getting opening; they do not have all their traffic flows or all their students in, etc. He stated that he is trying to consolidate it into two pieces: 60 percent and 100 percent. He asked who is going to be able to go out there and get their eyes on section two at 15 percent. He stated that he thinks it could be a little more workable to make it into two pieces for the Town and the applicant to manage it. Mr. Cannon reviewed that they should start at 60 percent and six to nine months out if that works, then go to 100 percent. He stated that he would talk to the applicant about that, but it sounds workable. Chair Rondeau reviewed that he is thinking eight to nine months at 60 percent so it gives them the opportunity to get the students and staff in, and deliveries, and get all the parts and pieces running at the 60 percent level, then evaluate from there for an additional three months. He said then if we do not see any discrepancies, then you bump it up to the 100 percent at a year. He stated that if there is going to be a problem, potentially it would be seen at the 60 percent level. Mr. Mello stated that this agreement is for one year; he asked what happens when it expires. Mr. Cannon stated that it then goes to 100 percent capacity. Chair Rondeau stated that the Planning Board could have a reevaluation at 100 percent to have the last bite at it. Mr. Cannon reviewed the intent that if there is not a problem at 60 percent then they get to 100 percent.

Attorney Winter reviewed that this is a proposed condition, a draft that counsel put together as a talking point for this conversation; this is not something that was discussed or negotiated. He asked the Planning Board that if they are comfortable, they can authorize Mr. Winter to work with counsel on a new draft. He will take all the comments and concerns from the Planning Board, and he has some of his own, and they will work it out. He stated that this is just a starting point. Planning Board members discussed what is a quantifiable concern. Mr. Winter stated that what their peer reviewer is going to identify is some of the trigger points about what may happen. If it does not happen, great; if it does happen, then they need to talk about it and address it. He stated that the applicant needs to know about them as well so the applicant can address them. He stated that the applicant wants some predictability/certainty. He stated that they want to define those benchmarks and what they are looking for when they perform the review so they know what the expectations are when they get to that point in the timeline.

Ms. Wierling commented that looking at the preliminary draft conditions is good, but they need the background information including the traffic study for the Planning Board to be able to comment. Mr. David discussed that there have been accidents in that area. He asked what happens if all is well for the applicant at 60 percent but not at 100 percent such as accidents happening. He asked how is the Planning Board going to determine if the accidents are the applicant's fault or the other businesses that are already there. Chair Rondeau said that if there are any accidents now, it is between Wendy's and Midas. He said the Planning Board can pull that paperwork if necessary; the information is there to look at prior to the day care moving in. Mr. Cannon stated that he thinks the judge felt it was pretty clear that traffic that is off site is not within the purview of a Dover Amendment use like this. Mr. David confirmed that Mr. Cannon was indicating that taking a left or a right onto Rt. 140 does not

even come into play. Mr. Cannon stated correct. Mr. Winter explained the types of traffic that can and cannot be considered within the Dover Amendment use. Ms. Williams stated that her concern is setting too progressive of a timeframe to make the observations. She asked what if they cannot even get to 60 percent for over one year; therefore, what was observed at nine months was only 35 percent. She stated that if the Planning Board sets strict time limits and they are up, there is a possibility that it has not been observed at the indicated capacity. She stated that she feels the Planning Board cannot make an accurate assessment until the applicant is at 60 percent and then 100 percent capacity. Chair Rondeau stated that maybe they can document when they are at 60 percent and it can be set up that way in the draft. Mr. Winter stated that he does not think it should be assessed based on the calendar; it should be a provision regarding enrollment/capacity. Mr. Cannon stated that he thinks they can work together to make that happen.

Motion to Continue the public hearing for 515 West Central Street, Site Plan Application, to January 23, 2023. Wierling. Second: Power. Vote: 5-0 (5-Yes; 0-No).

Motion to Adjourn the Planning Board Meeting. Wierling. Second: Williams. Vote: 5-0 (5-Yes; 0-No).

Meeting adjourned at 8:21 PM.

Respectfully submitted,

Judith Lizardi,
Recording Secretary

--Planning Board approved minutes at January 23, 2023 Meeting