



TOWN OF BOXBOROUGH

Planning Board

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www.boxborough-ma.gov

Mark Barbadoro, Chair • Cindy Markowitz, Clerk • Mark White • Rebecca Verner • Kathleen Vorce

APPROVED ON March 20, 2023

Meeting Minutes

March 6, 2023

7:00 PM

Remote Meeting

Members Present: Mark Barbadoro (Chair), Cindy Markowitz (Clerk), Mark White, Rebecca Verner, Kathy Vorce, and Janet Keating-Connolly (associate member).

Staff Present: Alec Wade, Town Planner; Sue Carter, PLACES Associates

Chair Barbadoro called the meeting to order at 7:00 PM with a roll call attendance.

Public Comment

None at this time.

General Business – *The Board took up this item at this time.*

Recommendation of Warrant Articles

- MS4 Permitting (Year 5)

Mr. Wade explained that the complete scope of work has been received from the consultant, Comprehensive Environmental, Inc. (CEI). He and Ed Kukkula both agree the quote is reasonable. This cost is requested as part of the budget in the capital plan. The Town is in its sixth year of this permitting. There are six tasks that need to be completed as part of this project.

In response to a question from Ms. Markowitz, Mr. Wade stated that the MS4 is not a program with a stop date. This will continue into the future. He stated that he would request an update on the scope of each item from the consultant.

Mr. White entered the meeting.

PUBLIC HEARING (cont.) – **Proposed Zoning Bylaw Amendment**

The Boxborough Planning Board will conduct a public hearing pursuant to MGL Chapter 40A, Section 5 on Monday, March 6th, 2023 at 7:05 PM to consider the following proposed Zoning Bylaw amendments:

- Amendment of Section 4.2.2 of the Boxborough Zoning Bylaw, regarding Accessory Apartments. The intent of this revision is to update language that currently limits the size, composition, and feasibility of accessory apartments.

Chair Barbadoro opened the public hearing.

Ms. Vorce stated that she brought this item up to the Planning Board in hopes of liberalizing some of the provisions of this bylaw, as it has not been a well-used bylaw. The bylaw has since gone through some proposed amendments.

Mr. Wade made a presentation on the proposed bylaw amendment. In Boxborough, accessory dwelling units (ADUs) are allowed as long as they are attached to or part of the primary structure. Examples can be viewed at www.accessorydwellings.org. He explained that the Accessory Apartment bylaw was adopted by the Town in 2007, but this only allowed these units by Special Permit. In 2013, this bylaw was amended to allow for these units by Building Permit instead. The bylaw today limits who can occupy the unit (family and caregivers only), the size of the unit (600 s.f.), the appearance of the entryway, and imposes greater parking requirements. These items make the bylaw challenging for many who may wish to seek an ADU.

Mr. Wade reviewed the proposed amendments to the bylaw. The Board needs to decide if there should be a minimum ADU size of 600 s.f. He noted that getting an ADU smaller than this is difficult.

In response to a question from Ms. Vorce, Mr. Wade explained that the bylaw language states that an ADU can be attached to the primary or a secondary structure but cannot be freestanding.

Owen Neville asked if, as the bylaw reads, ADUs could be within a detached structure if the structure was in existence prior to March 8, 2007. Mr. Wade agreed that this would be a point of question for the Zoning Commissioner in terms of enforcement. Chair Barbadoro stated that he believes this language would allow for the development of the entirety of a structure, provided it does not exceed the percentage requirement of the principal structure.

Mr. Neville noted that he believes the bylaw language still includes that only five permits can be granted each calendar year. This language was originally included because it was believed there could be a surge in requests for ADUs in the Town. The amendments to the bylaw may make it more attractive, but he does not believe this language is still needed. He also stated that he would not like to see a minimum square footage for ADUs included in the bylaw.

Francie Nolde echoed Mr. Neville's points. She agreed that there should not be a limit to the number of permits issued for ADUs each year. She asked how many ADUs currently exist in Town, including those that may be unpermitted. Mr. Wade stated that it is unknown if there are any unpermitted ADUs currently in Town.

Ms. Nolde asked about allowing structures built prior to 2007 as an adjunct to someone's home. Chair Barbadoro stated that he believes that is the intent of the bylaw.

Ms. Nolde agreed that she believes there should be more flexible minimum or maximum square footage requirements. Chair Barbadoro noted that the language could be amended to strike the

600 s.f. minimum and allow up-to 1,000 s.f. He noted that he wants to extend affordable units, but very large apartments may price out those looking to benefit from this bylaw.

Hugh Fortmiller stated that he does not believe a 1,000 s.f. maximum will create more ADUs.

Ms. Vorce stated that accessory structures currently, provided they are not occupied, can have 10' setbacks from a sideline. If these were converted to ADUs, they would have to comply with the standard setback of 30'-40'.

Mr. White asked about the number of units produced since 2007. Mr. Wade stated that he does not have this number on hand.

Mr. White stated that he is not in favor of the decommissioning policy. Chair Barbadoro stated that the bylaw does not state that an ADU must be decommissioned when a property is sold. He stated that he will likely not vote in favor of the bylaw if the decommissioning item is removed.

The Board discussed different decommissioning scenarios.

Ms. Verner stated that she believes small steps should be taken until it is known what the impacts may be to neighborhoods. This bylaw cannot be wholesaled in one step.

Mr. Wade recommended the Board affirm each section of the bylaw or have discussions as to what changes should be made.

Ms. Vorce moved to amend the language in section a to read, 'the Inspector of Buildings may grant a total of ten (10) permits for each calendar year for accessory apartments also known as Accessory Dwelling Units (ADU).' Mr. White seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 5-0-0.

There were no amendments suggested to section b.

Mr. White moved to amend the language in section c.4. to strike, 'no less than 600 square feet and...' Ms. Vorce seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 5-0-0.

Ms. Vorce moved to amend the language in section c.4. to strike, '/lessor.' Mr. White seconded.

Roll call: Barbadoro – nay; Verner – nay; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 3-2-0.

Chair Barbadoro moved to strike '1,000' and change it to '1,400'; strike 'habitable' and change it to 'of gross floor area;' and strike 'or be no greater than 25% of the size of the single-family dwelling, whichever is greater.' Ms. Vorce seconded.

Discussion:

Ms. Markowitz and Ms. Verner stated that they would like to see 1,400 s.f. changed to 1,200 s.f. Mr. Barbadoro suggested 1,300 s.f. as a compromise.

Chair Barbadoro amended his motion to strike '1,000' and change it to '1,300'; strike 'habitable' and change it to 'of gross floor area;' and strike 'or be no greater than 25% of the size of the single-family dwelling, whichever is greater.' Ms. Markowitz seconded.

Roll call: Barbadoro – aye; Verner – nay; White – aye; Vorce – aye; and Markowitz – aye. Motion passed 4-1-0.

Mr. Wade explained that that a 2,600 s.f. unit would create essentially a two-family home. However, a 2,500 s.f. unit, when maximizing the 1,300 s.f. primary unit would mean that the 1,200 s.f. would become the accessory unit. The primary unit becomes the greater of the two spaces, regardless of which unit the owner occupies. Chair Barbadoro noted that there is a question as to how to create a 60/40 split for this.

Chair Barbadoro stated that this argument is moot because the accessory unit has to be smaller than the principal structure. Ms. Verner stated that she has a concern regarding the character of a neighborhood in some of these scenarios, such as an existing carriage house becoming the primary structure. A primary structure in a backyard could change the character of a neighborhood. Mr. White noted that, unless the carriage house was larger, it would not become the primary structure. Mr. Wade noted that one item of compliance is that an ADU is secondary and incidental to the single-family dwelling unit on a lot.

Ms. Vorce moved to amend the previous motion to include, 'but not to exceed 40% of the gross floor area of the existing single-family dwelling.' Mr. White seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye. Motion passed 5-0-0.

Mr. White moved to approve item 4 of section c, as amended. Ms. Vorce seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye. Motion passed 5-0-0.

The Board reviewed item 5 of section c. The Board agreed to change the effective date in this item to the date this hearing was first advertised.

Mr. White moved to approve item 5 of section c, as amended. Ms. Verner seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye. Motion passed 5-0-0.

Chair Barbadoro explained that item 6 of section c was amended to read, 'One of the Dwelling Units shall be the legal residence of the owner of the lot.'

Ms. Vorce moved to approve item 6 of section c, as amended. Mr. White seconded.

Discussion:

Ms. Markowitz noted that “owner occupied” is used elsewhere in the document and this language should be kept consistent is one way or another. The Board agreed to this change.

Ms. Markowitz moved to approve item 6 of section c, to read ‘One of the Dwelling Units shall be occupied by or the legal residence of the owner of the lot.’ Mr. White seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 5-0-0.

The Board discussed parking scenarios. Ms. Markowitz stated that she has a concern regarding maximum numbers of parking allowed on lots, along with lot coverage. Chair Barbadoro asked how a maximum parking limit could be enforced. Ms. Markowitz stated that this invites more cars than a single-family dwelling. That, plus increased driving surfaces, could be a nuisance to neighborhoods.

The Board discussed item 10 of section c.

Ms. Vorce moved to approve item 10 of section c, as amended. Mr. White seconded.

Roll call: Barbadoro – aye; Verner – nay; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 4-1-0.

Ms. Markowitz moved to approve item 9 of section c, amended to read ‘effective the date of the first public hearing of this bylaw.’ Mr. White seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 5-0-0.

The Board discussed the proposed changes to the Definitions section. The Board added a definition for an ADU: Accessory Dwelling Unit or Accessory Apartment shall mean a dwelling unit that is customarily incidental and subordinate to the single-family dwelling unit.

Ms. Markowitz moved to add the definition of Accessory Dwelling Unit or Accessory Apartment as discussed. Ms. Vorce seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 5-0-0.

Mr. White moved to strike the words “a weekly” from the Dwelling Unit definition. Ms. Vorce seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 5-0-0.

Mr. White moved to close the public hearing Ms. Vorce seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 5-0-0.

Mr. White moved to approve the wording of the Accessory Apartment draft bylaw, as amended.

Ms. Vorce seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 5-0-0.

Approval of Minutes – February 27, 2023

The Board tabled approval of these minutes to a future meeting.

General Business – *The Board took up this item at this time*

Recommendation of Warrant Articles

- Acceptance of Joyce Lane, Loring Avenue, and Macleod Way

Mr. Wade explained that legal counsel has responded to the Planning Board's question regarding the Town's responsibility to upgrade the roadway beyond its existing conditions. Legal counsel has stated that the Town does not have to bring the road up to subdivision rules and regulation standards. That is left to the discretion of the DPW and the Town. However, the Town would not incur greater liability by the roadway and the sidewalks remaining in their existing conditions. Regarding what the Town's liability is if emergency services are hindered based on the condition of the roadways, legal counsel responded that there is no greater liability with the acceptance of the roads in that situation. If this roadway was accepted, enforcement of on-street parking would fall under the discretion of the Police Department. If the Police Department found that emergency vehicles could not adequately access portions of the space due to on-street parking, the Police Department would enforce this through a ticketing procedure or towing in emergency situations. Legal counsel has provided updated language, giving a bit more flexibility in the timeline for this process. Legal counsel also provided an updated Warrant Article. Mr. Wade stated that he has devised a method by which the Town could fund this project. It is expected that the upgrade cost for the roadway, in FY2023, would be approximately \$175,000. This includes upgrading the road and the sidewalks from their existing conditions. The stormwater report states that the existing storm drains are in good condition and do not need upgrading. However, there is no scope of work for the drain lines below the ground. If the Town were to undertake that process, it would likely cost approximately \$1,850 added to the Town's yearly Chapter 90 appropriation. If the Town were to accept the roadway and was seeking methods to fund the \$175,000 upgrade, he recommended that the Town could either incur the entire cost against free cash, or the Town could apply for one of three grant programs: Mass Works Infrastructure Program, the Complete Streets Program, or the Housing Choice Initiative. Both the Complete Streets Program and the Housing Choice Initiative require legwork for the Town to become eligible. The Mass Works application could be completed this spring, but without a match of at least 25% in hand, it is likely not feasible. Mr. Wade stated that he defers recommendation as to whether or not to accept this roadway to his peers and to the Town Meeting floor. He noted that the DPW Director does not recommend accepting this road because acceptance means incurring a \$175,000 upgrade at some time in the near future.

Chair Barbadoro asked about the drains which run through private property, depicted as easements. Mr. Wade stated that, if the Town accepts the road, these easements would be absorbed as well and included on the plan set.

Ms. Markowitz asked about the potential cost to taking the roads and easement through eminent domain. Mr. Wade stated that he believes the Town would acquire the roadways and easements without cost. Obtaining these through eminent domain gives each individual property owner the option to waive their stake in it, thus doing it without cost.

Mr. White stated that he believes the Town has an obligation to accept this road, as a mistake was previously made by the Town in regard to this road. The obligation cost for this road needs to be made clear.

In response to a question from Ms. Markowitz, Mr. Wade explained that legal counsel has no record or knowledge of the release of the performance bond for these roadways. This was released by the ZBA at that time.

Mr. Wade stated that he spoke with Mike Jeanson and Jim Fenton last week and they were surprised about this whole process. They expressed that they were unaware the road had never changed hands. Mr. Wade suggested another meeting be scheduled to start addressing some of these matters, such as the outstanding tax bill, the current condition of the road, and if they would waive the appraisal and simply gift it to the Town or come current on their taxes. Ms. Markowitz noted that the tax bill is approximately \$2,700.

Ms. Vorce moved to recommend acceptance of the roadway, with conditions that any grant funding pursued for this does not conflict with grant funding pursued for other items, that the Town be compensated for money in arrears, that there be no cost to the acquisitions of the drainage easements, that funds for any ticketing and towing charges in this development go to the DPW's costs to maintain Town roadways, that there be a total cost estimate including underground drainage, and that all drainage easements be completed. Chair Barbadoro seconded.

Ms. Vorce withdrew her previous motion.

Chair Barbadoro suggested that the Board put together a checklist of items and hold a vote on this on the floor of Town Meeting. Some information, such as total costs, including legal costs, and if the Town has legal authority to fully maintain all of the drainage on both Town and private property, should be made clear before the vote.

Ms. Vorce moved that the recommendation be deferred to Town Meeting so that matters discussed this evening can be resolved. Mr. White seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye.
Motion passed 5-0-0.

- Establishment of a Fall Town Meeting

Mr. White moved to not recommend this bylaw. Ms. Vorce seconded.

Roll call: Barbadoro – nay; Verner – aye; White – aye; Vorce – aye; and Markowitz – nay.

Motion passed 3-2-0.

- MS4 Permitting (Year 5) – *This item was previously addressed.*
- Acceptance of Joyce Lane, Loring Avenue, and Macleod Way – *This item was previously addressed.*

WORKING SESSION - Tree Protection Bylaw

Ms. Verner explained that FinCom would like to see a copy of the final language for this bylaw by its next meeting, in order to receive a recommendation for Town Meeting. Ms. Vorce explained that there was concern on the part of some FinCom members regarding this being an infringement on personal property rights. She stated that it needs to be made clear who this bylaw will actually impact.

Chair Barbadoro asked about how this interacts with the stormwater bylaw. Ms. Verner stated that this bylaw does not refer to overall vegetation; it deals with vegetation over 6” in caliper.

Chair Barbadoro suggested placing some of the information in the bylaw into a Rules and Regulations document, in order to pare the bylaw down a bit.

Owen Neville asked if there are other towns in the Commonwealth that have similar bylaws. Ms. Verner stated that some examples are Concord and Wellesley. Mr. Neville noted that these towns have their own Tree Departments. The Town’s site plan and stormwater management items are good existing tools for this type of tree protection for large land clearing.

Maria Neyland stated that this bylaw appears to be targeted against private taxpayers who may want to do certain things on their land. This is a government overreach. Targeting this toward commercial developers may be more appropriate than aiming it at private taxpayers. She does not believe there will be a lot of support from residents for this bylaw as written.

Chair Barbadoro suggested carving out exceptions for agricultural use, or exceptions for those who already have permits from the State for clearing. Mr. Neville suggested including land under control of the Conservation Commission. Chair Barbadoro suggested agricultural uses pursuant to MGL Chapter 40A Section 3.

Mr. White suggested the following changes: change disturbance of land to three acres and strike “private” so that this only deals with public land.

There was discussion regarding when/if legal review of these proposed bylaws would occur.

Department Updates – by Alexander Wade, Director/Town Planner - *This item was not addressed at this time*

- Presentation to Finance Committee

Committee Reports: *This item was not addressed at this time*

- Community Preservation Committee (Vorce)
- Design Review Board (Verner)
- Economic Development Committee (White)
- MAGIC Representative (Markowitz)
- Water Resources Committee (Keating-Connolly)
- LELWD Small Cell Committee (Markowitz)
- Building Committee – TBD
- Boxborough Leadership Forum (Barbadoro)

Recently Received Correspondence

None at this time.

New Business (if any) - *This item was not addressed at this time*

ADMINISTRATIVE BUSINESS - *The Board did not address these items at this time.*

- Town Center/Enclave Project Updates
- Technical Assistance Program Grant Application and other Grant Opportunities
- Master Plan Action Items
- Website update
- Legislative Update

Ms. Vorce moved to adjourn the meeting at 11:55pm. Mr. White seconded.

Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye.

Motion passed 5-0-0.

Meeting Documents:

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Zoning Bylaw Public Hearing documents

Tree Protection General Bylaw documents

Warrant Article Recommendations

Recently Received Correspondence 3/6/23

Join Zoom Meeting

<https://us02web.zoom.us/j/81153575453?pwd=S0drcXdXRlZicEUvN0dzZVVvQy9oUT09>

Meeting ID: 811 5357 5453

Passcode: 449112