



## TOWN OF BOXBOROUGH

### Planning Board

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

APPROVED ON May 22, 2023

### Meeting Minutes

**April 3, 2023**

**7:00 PM**

### Remote Meeting

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

**Staff Present:** Alec Wade, Town Planner

Chair Barbadoro called the meeting to order at 7:05 PM with a roll call attendance.

#### **Public Comment**

None at this time.

**PUBLIC HEARING (cont.)** – Applications under Boxborough Zoning Bylaw Section 6105 Special Permit Private/Common Driveways in the Office Park District, 8000 Site Plan Approval, and 9200 Special Permits; and the Site Plan Approval Rules & Regulations submitted by for Site Plan Approval & Special Permit submitted by Boxborough Adams Realty Trust to construct a 140,000sf Office/Research & Development/Light Manufacturing facility. Subject property is located in the Office Park District at 244 Adams Place and is identified as Assessor's Parcel #s 12-025-000.

Chair Barbadoro read the notice and opened the public hearing.

Attorney Paul Alphen, representing the applicant, stated that this application has been pending for many months. The applicant recently submitted a plan which reduced the footprint of the building by 25%. The Board reacted favorably to the degree that it was an improvement over the prior plan, but still was not satisfied with the overall plan. The Board encouraged the applicant to not proceed with further definition of the plan. This brought the applicant back to the most recently modified plan, prior to the reduction on the footprint, that was submitted. The Board has articulated some concerns with that plan which the applicant does not necessarily agree with.

Attorney Alphen noted that many of the concerns are that the plan is inconsistent with the Master Plan, but the Master Plan is inconsistent with the zoning bylaw.

Chair Barbadoro noted that there are other allowable uses in this district that are consistent with the Master Plan, such as restaurants.

Attorney Alphen stated that the applicant is requesting the Board to act on the application before it at this time.

Chair Barbadoro noted that approval or denial of an application is not based on the developer attached to the project.

Rich Guzzardi stated that he reviewed the application package. He asked why the Board is proceeding with a vote on this package, instead of continuing to work on the updated application which seemed less intrusive on the property.

Chair Barbadoro asked if the applicant would consider requesting to withdraw the application without prejudice and work on a different type of development for the site. Israel Lopez, The Gutierrez Company, stated that he believes this project meets the standards of the bylaw and will be economically beneficial to Boxborough. This type of project presents a strong backbone for the economy at this time. These types of facilities attract highly skilled workers and introduce economic vitality to communities. The applicant is willing to massage the existing plans. Chair Barbadoro noted that withdrawing without prejudice allows the applicant to work with Town staff on a different project to be presented in the next two years. Mr. Lopez stated that it is unclear what changes could be made to this plan in order to gain the Board's support on this project. In light of this, he would like the Board to make a decision on the application as presented.

Mr. Lopez noted that the applicant is open to revisiting the plan presented at the last Board meeting, with the proposed reduction in size. Attorney Alphen stated that, if the Board is not inclined to approve the plan in front of it this evening, he would request that the Board consider reviewing the most recent update to the plan and encourage the applicant to further work on fleshing that plan out.

Chair Barbadoro stated that the Board wanted to see significant changes to the plan, but the applicant has not been willing to move forward with some of the changes as suggested.

Mr. White asked what a good enough proposal for the Board will be in order to look kindly upon it. The applicant is seeking an answer to this question. Chair Barbadoro stated that the Board has previously noted that the location proposed on the site is not acceptable, or for the applicant to work a deal with the hotel regarding parking, or to not create large retaining walls behind the hotel. The applicant has suggested that each of these suggestions makes the project less financially viable. Mr. White suggested that the Board could quantify some of these items more specifically for the applicant. He stated that he does not have an issue with the fact that the proposed project can be seen from Route 495 or high retaining walls if they are pulled back from the water resources. While he may rather see a different use on this site, the market is what it is.

Chair Barbadoro asked for Mr. White's specific metrics. Mr. White stated that he liked the last presentation of the plan from the applicant.

Ms. Markowitz stated that the revised project showed a 4' shorter building, which does not satisfy her height limitations. She cannot give a definitive height, as no visual renderings were given by the applicant. The mass and scale of the building are too large and overwhelm the hotel. The retaining/ledge wall gives too much impact to the site. She does not have an issue with the use proposed. The proposal needs to fit in harmony with the landscape and terrain, per the requirements of the bylaw and special permit. It is the applicant's obligation to design the building, not the Board's. She is happy for the Board to give the applicant additional feedback to allow for a revised project.

Ms. Verner stated that the Board is not a hired consultant for this project. The applicant's team is talented and has been given critique to make the project smaller and more site sensitive. 80' in grade change and wall work is not seen anywhere else in Town.

Chair Barbadoro stated that a special permit project is either approved, approved with conditions, or denied by the Board. The Board needs to balance if the Town is better off with or without a project as proposed. The Board does not replan an applicant's project for them. He suggested again that the applicant withdraw the application without prejudice and work through a conceptual process with Town staff. The Board is not obliged to create a successful project for an applicant.

Mr. Lopez stated that he would like to proceed with the plan, as proposed.

Ms. Markowitz asked which proposal the Board is voting on. Attorney Alphen stated that, unless the Board directs the applicant to further develop the concept plan presented at the last meeting, the Board should vote on the plan submitted prior to the most recent, reduced footprint plan.

Ms. Verner moved to close the public hearing. Ms. Markowitz seconded.

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

Motion passed 5-0-0.

Discussion:

Mr. White noted that he would have looked more favorably on the reduced footprint application, but, due to the motion at hand, he has to vote on the original application. He understands the applicant's predicament in this process. He stated that he believes the revised plan could have been massaged further.

Chair Barbadoro noted that he also understands the applicant's predicament, which is why he gave the suggestion to withdraw without prejudice.

Ms. Markowitz moved to deny the application under Boxborough Zoning Bylaw Section 6105 Special Permit Private/Common Driveways, Section 8000 Site Plan Approval, and 9200 Special Permit Approval for the project as originally proposed at 244 Adams Place. Ms. Verner seconded.

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

Motion passed 5-0-0.

Alec Wade stated that he will draft a denial decision.

Ms. Verner moved to authorize the Chair to sign the denial decision on behalf of the Board. Ms. Markowitz seconded.

Discussion:

Ms. Markowitz stated that she would like the Board to have input into the decision. Mr. Wade stated that the Board has voted a decision and now has 14 days to draft the decision and publish it. The Board would have to schedule a special meeting in order to review the draft denial. The Board agreed to schedule a meeting on April 13<sup>th</sup> at 7pm in order to review the decision.

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

**ROAD ACCEPTANCE** – To see if the Board will vote to recommend to the Select Board that the private ways known as Loring Avenue, Joyce Lane, and McLeod Way be laid out as public ways in the manner shown on the plan recorded with the Middlesex South Registry of Deeds as Plan 906 of 2002, and as further set forth in accordance with that plan in the legal descriptions provided to the Board.

Mr. Wade stated that the majority of questions on this topic have not been answered but should be during the month of April. A couple of Board members have asked for additional legal materials based on the settlement agreement and further research is needed. The subsurface infrastructure is scheduled to be inspected in April. The entire structure will be videoed, and a written report will be provided to the Board. The easement plan has been settled and can be voted on by the Board tonight. The settlement agreement has been included in the Board's packet. The Homeowner's Association (HOA) is willing to sign a memorandum of understanding (MOU) with the Town to address issues such as the parking enforcement. An MOU will be drafted between the Town and HOA that the HOA will support the Town and its enforcement and will not contest enforcement measures moving forward if the roadway is accepted. Legal counsel has signed off on the easement plan. The Select Board, at a duly noticed public hearing scheduled for next Monday, will then vote on this acceptance.

Ms. Vorce stated that the details of the settlement agreement are included but Exhibit A and Exhibits B1 and B2 were not attached to the settlement agreement received by the Board. She noted that additional details may be in these documents.

Ms. Markowitz stated that she has a question about the easement plan of land. This appears to be the 2002 plan and she asked if it includes the drainage easements. She asked why the request is to approve a 22-year-old easement plan. Mr. Wade explained that the as-built plan does not sufficiently demonstrate actual easements. Legal counsel was able to identify this plan set which does demonstrate actual access easements, roughly 10' wide, providing access and utility for the Town. This plan is already on file with the Registry of Deeds and legal counsel feels the plan is both adequate and most appropriate for any work that would need to be done in the future.

Mr. Wade explained that, if the Planning Board supports this recommendation, he will draft a report outlining the remaining outstanding items along with the Board's recommendation that the Select Board use eminent domain to take the easements and the property shown on this specific plan set.

Ms. Vorce moved to recommend to the Select Board that the private ways known as Loring Ave, Joyce Lane, and McLeod Way be laid out as public ways in the manner shown on the plan recorded with the Middlesex South Registry of Deeds, as Plan 906 2002 and as further set forth in accordance with that plan in the legal descriptions provided to the Board. Mr. White seconded.

Discussion:

Ms. Markowitz expressed concern that this may indicate to the Select Board that the Planning Board is recommending accepting the roads, which is unclear without the additional information needed.

Mr. Wade explained that his report would include a recommendation from the Board and would clearly note outstanding concerns and who has brought them forward.

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

**General Business –**

**Department Updates** by Alexander Wade, Director/Town Planner.

Mr. Wade explained that Mass Department of Transportation (DOT) will be holding a design public hearing tomorrow evening at 7:00 PM to consider the proposed design for renovation and improvements to the 111 bridge over Route 495. The proposed concept features a shared use path and an intersection realignment that will improve walkability and driver safety within the project area. The link to the meeting will be available on the Town website and he encouraged members of the Board to attend. He has provided some feedback on this project and will continue to do so.

Mr. Wade stated that on April 11<sup>th</sup>, the Sustainability Committee will be hosting a public forum on the Green Communities Program, during which he and the Committee will answer questions on the warrant article proposed to Town Meeting and the Green Communities Program. The flyer is posted on the Town website. On April 12<sup>th</sup>, the Conservation Commission, Recreation Commission, and the Office of Land Use & Permitting will be hosting a public forum on the Open Space and Recreation Plan. This forum will be used to gather data and input on the conditionally approved plan, along with guided exercises and a question-and-answer session. This event will be hosted in-person at the Town Hall.

Mr. Wade explained that the Town Administrator has announced that he will be hosting a staff and volunteer recognition luncheon. All Board members are encouraged to attend. Board

members may also submit nominations for each other, other board members, or Town staff in certain categories regarding providing exemplary service, or other ways people should be honored.

Mr. Wade stated that the Greater Merrimack Valley Restaurant Week will be taking place April 10-14. The Greater Merrimack Valley Convention and Visitors Bureau has coordinated with restaurants in the area to offer exciting specials and menu items.

Regarding enforcement matters, Mr. Wade explained that the Department of Land Use & Permitting will begin implementation of its enforcement procedures in April. This is meant to support residents and businesses in their efforts to operate businesses and/or homes fully permitted and without error. An example of this process is a property that is operating without the necessary permit, compounded with a history of violating the State's Wetlands Protection Act. The team will meet tomorrow to consider and identify all possible violations. The Building Commissioner will begin issuing orders to remediate or remove the violations in place. Businesses unwilling to respond or comply may face financial or legal recourse from the Town. If Board members or the public suspect a violation has occurred, he encouraged them to contact him directly.

Mr. Wade stated that the Town has received a notice of submission by Epsilon Associates to Massachusetts Environmental Policy Act Office (MEPA) to garner State Approval towards a 577,525 s.f. office park to be constructed in the rear of the property known as 1414 Massachusetts Avenue. He encouraged all residents and board members to review the materials provided and address any questions to the Planning Office. People may also reach out directly to Epsilon Associates. Feedback can be provided by May 10<sup>th</sup>, and MEPA will receive this feedback.

### **Approval of Minutes – March 20, 2023**

Ms. Markowitz moved to approve the meeting minutes of March 20, 2023, as amended. Ms. Vorce seconded.

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

Motion passed 5-0-0.

### **Planning Board Training**

*This item was not addressed at this time.*

**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**

*This item was not addressed at this time.*

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

### **ADMINISTRATIVE BUSINESS**

- Town Center/Enclave Project Updates

Ms. Markowitz asked for an update on landscaping inspections at an upcoming meeting. She also asked about the status of the 400 Beaver Brook building. Mr. Wade stated that foundational items are being worked on at this time.

- Grant Opportunities
- Master Plan Action Items
- Website update
- Legislative Update

### **EXECUTIVE SESSION**

Ms. Markowitz moved to conduct an executive session at 8:38pm via a separate Zoom event to review and/or approve the release of executive session minutes of November 22, 2021, March 28, 2022, August 1, 2022, August 23, 2022, and September 19, 2022 pursuant to G.L.c. 30A, Section 21(a)(7) and not to reconvene in Open Session thereafter. Ms. Verner seconded. Roll call: Barbadoro – aye; Verner – aye; White – aye; Vorce – aye; and Markowitz – aye. Motion passed 5-0-0.

### **Meeting Documents:**

Planning Board Agenda April 3, 2023

244 Adams Place Special Permit documents

Boxborough Meadows Road Acceptance documents

Planning Board draft minutes 3/20/23

Planning Board Meeting Minutes

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Department Updates

Recently Received Correspondence 3/20/23

**Join Zoom Meeting**

<https://us02web.zoom.us/j/83499051140?pwd=VHZla0dwRy83ZHhYUXZtTkNGaUg0Zz09>

Meeting ID: 834 9905 1140

Passcode: 534115