

Zoning Board of Appeals Minutes
Selectmen's Room, Middleborough Town Hall
10 Nickerson Avenue, Middleborough, MA 02346
March 24, 2022

Chairman Darrin DeGrazia, Dr. Edward Braun, Liz Elgosin, Jack Healey and Joseph Mandile were present.

7:30 P.M. Minutes

Upon a motion made by Liz Elgosin and seconded by Jack Healey, the board

VOTED: to approve the minutes of March 10, 2022.

Chairman Darrin DeGrazia, Dr. Edward Braun, Liz Elgosin, Jack Healey and Joseph Mandile were in favor.
(5-0)

7:30 Peter Varrasso – Everett Street

Chairman Darrin DeGrazia read into the record the legal ad and declared the hearing open. The applicant was not present.

Upon a motion made by Jack Healey and seconded by Liz Elgosin, the board

VOTED: to table this item and they will take this up last.

Chairman Darrin DeGrazia, Dr. Edward Braun, Liz Elgosin, Jack Healey and Joseph Mandile were in favor.
(5-0)

7:32 P.M. Michael O'Shaughnessy for Sachem Construction – 691 Wareham Street

Chairman Darrin DeGrazia read into the record the legal advertisement and declared the hearing open.

Nyles Zager, Zenith Consulting Engineers submitted revised plans for the board. The subject property is located at 691 Wareham Street, in the GUX district and WRPD Z4. This is approximately 28.5 acres and has boarding vegetative wetlands to the West and North of the property. This has been approved by the Conservation Commission.

They are proposing fifteen (15) duplex style building with thirty (30) units total. The zoning requires two spaces per unit. They are proposing 67 spaces and 23 overflow parking, in the grass area, for a total of 90 spaces. This would be three per unit. The property will be serviced by on-site septic system, which they are proposing in the center area. There will be on-site wells, gas and underground electric.

Nyles Zager reviewed the drainage, landscaping and lighting, in detail, for the board.

The plans that the board sees before them tonight were submitted to Amory Engineering for review. They have addressed his concerns.

Jack Healey asked if the spaces are going to be designated to specific units. Nyles Zager said they are not, but if the boards would like to see that they can add that to the plan. Jack Healey would like to see designated spaces.

Liz Elgosin asked how many bedrooms/baths in each unit. Nyles Zager said there are fifteen -three (3) bedrooms and fifteen – two (2) bedrooms. Boaz McMahon, Sachem Construction said each unit will have one side with three bedroom and one side with two bedroom.

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Chairman Darrin DeGrazia asked what the distance is from the entrance of this project and the entrance of SEMASS on the opposite side. Nyles Zager said it is approximately 2000' away.

Joseph Mandile asked if it's correct that they said the overflow parking would be on grass. Nyles Zager said that is correct. Joseph Mandile asked if that is because they need the impervious space. Nyles Zager said they are trying to keep as much open space as possible.

Dr. Edward Braun said it would be logical to designate specific parking spaces. Boaz McMahon said these units are intended to be kept as permanent rentals, and the parking spaces will be designated in the lease agreements. If the board would like to see them on the plan they can do that.

Liz Elgosin said she only sees one dumpster for the entire project and that is not enough. Discussion ensued. Boaz McMahon said they can have private trash pickup. He would prefer this over a dumpster. The board agreed that they have no issues with the private trash pickup.

Joseph Mandile said they mentioned having gas, but there is still a moratorium on that. Nyles Zager said there is gas available down the road however, they do not know if it will be available at that time. Boaz McMahon said if the moratorium is not lifted the units will be serviced by individual heat pumps. Chairman Darrin DeGrazia said it would all be electric then. Boaz McMahon said yes.

Jack Healey asked them to review the sewerage system. Nyles Zager said every duplex would have one tank that will then all flow into a pump chamber, which would pump it to the common septic system. Jack Healey asked what happens if something goes wrong with this system. Nyles Zager said his client, Boaz McMahon, is planning on retaining these units so the cost would be on him. Jack Healey asked how they would know that, would it be in the lease agreement. Chairman Darrin DeGrazia said he would assume it would have to be since these are rental units. Boaz McMahon said the lease agreement would specify who's responsible of things in the common area. Jack Healey said in this case he would be responsible correct. Boaz McMahon said yes. Jack Healey said he would like to see this agreement prior to a vote. Boaz McMahon said it will be a Mass Standard lease agreement.

Jack Healey said with regard to the systems he would be responsible and will continue to be responsible. Boaz McMahon said yes, as long as he owns it.

Chairman Darrin DeGrazia read into the record the following letters: letter dated February 22, 2022, from Christopher Peck, DPW Director; letter dated February 28, 2022, from Kayla Smith, Health Officer; letter dated February 15, 2022, from Michael Bumpus, Water Superintendent and a letter dated March 4, 2022, from Patrick Brennan, Amory Engineers.

Chairman Darrin DeGrazia asked if they have a plan for snow storage. Nyles Zager said it will basically act as a roadway where it will get filtered off to the side in the common area.

Chairman Darrin DeGrazia said with regards to the parking on the grass area is that going to be a processed gravel or something. Is there going to be something that is going to delineate this or are you literally just going to park on the grass. Nyles Zager said you can put down a Grass Crete, which is basically like a pad that allows grass to filter through it.

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Discussion ensued regarding landscaping and suggested types to use. Chairman Darrin DeGrazia would like the variety of trees and planting listed on the plan.

Joseph Mandile asked if the snow storage is over the leaching field. Nyles Zager said no. The septic system has the primary area and the reserve area, and the reserve area will not be constructed. Joseph Mandile asked for the pump station, if you lose power, what happens. Nyles Zager said the system is designed to have a 24 hour emergency storage. Once the alarm goes off on the system you have 24 hours between the times the alarm goes off to the time it needs to be pumped. Joseph Mandile asked if they have a proposed generator for the system. Nyles Zager said no.

Joseph Mandile asked if they will be installing a fence. Boaz McMahon said he has no problem installing a fence if the board would like that.

Chairman Darrin DeGrazia asked if the units have attic space or full basements for storage. Boaz McMahon said the attics will be accessible by main hatch only and there will be full basements.

Chairman Darrin DeGrazia said the board would like to have the designated parking spaces added, dumpster can be removed, include a 6' stockade (or solid) fence (on the boundary) and more detailed landscaping information and a draft copy of the lease agreement shall be submitted.

Chairman Darrin DeGrazia asked if anyone would like to be heard on this matter. Hearing no comments Chairman Darrin DeGrazia called for a motion.

Upon a motion made by Liz Elgosin and seconded by Jack Healey, the board

VOTED: ***to continue the hearing until April 14, 2022.***

Chairman Darrin DeGrazia, Dr. Edward Braun, Liz Elgosin, Jack Healey and Joseph Mandile were in favor.
(5-0)

8:29 P.M. Peter Varrasso – Everett Street

Chairman Darrin DeGrazia said the applicant is still not present. The board will continue this hearing and reach out to the applicant.

Upon a motion made by Liz Elgosin and seconded by Jack Healey, the board

VOTED: ***to continue the hearing until April 14, 2022.***

Chairman Darrin DeGrazia, Dr. Edward Braun, Liz Elgosin, Jack Healey and Joseph Mandile were in favor.
(5-0)

8:29 P.M. Thomas Ryan for Diamond Cut Development – Miller Street

Chairman Darrin DeGrazia read into the record the legal advertisement and declared the hearing open.

Nyles Zager, Zenith Consulting Engineers informed the board that at the previous hearing there was a concern brought up regarding infection invalidity with the land. The project Attorney did find that this was valid. They have designed an area as parcel "A" on the plan that will be designated to the non-conforming lot.

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The proposal before the board tonight has five units opposed to six. Nyles Zager submitted revised plans for the board. The layout has not really changed but they were able to add additional parking spaces. They will now have seventeen (17) spaces, which is approximately three (3) spaces per unit.

Nyles Zager reviewed the revised plans for the board. The revised plans were set to Amory Engineering who indicated the changes are minor. His client did try to purchase additional land and it did not work out unfortunately. It was not from a lack of trying. They are at the point where they are just going to go to the five units proposed.

Jack Healey said the Conservation Commission has identified endangered species in the previous hearings. Nyles Zager said the area is not mapped Natural Heritage. Nyles Zager said the wetland line on the plan has been approved by the Conservation Commission. Chairman Darrin DeGrazia said the board has received a letter from the Conservation Commission that they are not within the Natural Heritage.

Jack Healey said under the previous plans there was going to be a considerable amount of fill brought in from another location, is that still the plan. Nyles Zager said that is correct. Jack Healey asked where this will be coming from. Nyles Zager said they are sure of that at this time. They are aware it needs to be clean fill. Jack Healey said the Selectmen would have to approve importation of the material to the site. What happens if this board approves the plan, and the Selectmen don't approve the importation of the material? They need to bring material in in order to deal with the depth of ground water. Nyles Zager said it is not only the depth of ground water but also because the site drops off.

Chairman Darrin DeGrazia said that is a separate issue and they would be required to file with the Board of Selectmen. Jack Healey said it is a separate issue, but he is not comfortable voting on this until the Selectmen deal with it. Jack Healey said there are two town wells in close proximity and three more not too far away. If something goes wrong on this site they are going to have a serious problem with the water system. Jack Healey asked how much fill they will be bringing in. Nyles Zager said he would come up with the numbers for the board. Jack Healey said the biggest concern with this proposal is the possible contamination of the town wells.

Chairman Darrin DeGrazia said there is no possible contamination if they are agreeing to do the project in the proper way. They will have to go through the permitting process with the Board of Selectmen. Chairman Darrin DeGrazia said they have already agreed that the soils will be tested from the site you will be excavating from, and tested as it arrives on the property. He is not sure of what the protocol is from the Board of Selectmen.

Dr. Edward Braun asked if there is a common area between the two families living in the duplex. Nyles Zager said that is correct. Dr. Edward Braun said that seems like an odd arrangement. Logan Smith, applicant, said the reason for the breezeways is to provide each unit with more privacy, such as not having a bedroom up against someone's laundry room. Dr. Edward Braun asked if it wouldn't be better to divide the common space up so everyone knew what portion is theirs. Dr. Edward Braun asked if they could be a little more creative and create a circumstance where each unit knows exactly what they are in charge of. Logan Smith said they could put something there to designate the area.

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Chairman Darrin DeGrazia said he sees on the plan for tree limbs and brush to be cleared and no trees proposed to be removed, to improve line of sight for Miller Street. Are you going to be able to just trim this up, the line of sight there is terrible and is at the point of being dangerous. Nyles Zager said they do have control over that area and they will improve it. Chairman Darrin DeGrazia said he would suggest going back 15-20', which would provide a great line of sight. He thinks they will need to remove some trees there.

Discussion ensued regarding the fill being brought in. Chairman Darrin DeGrazia said if the Board of Selectmen decide not to allow this then the project cannot go forward. That is the Board of Selectmen jurisdiction, not this board.

Chairman Darrin DeGrazia asked if anyone would like to be heard on this matter. Richard Audette, 402 Wareham Street discussed a certified vernal that was located here. Chairman Darrin DeGrazia said it appears that is on lot A, and is not part of this project. Richard Audette said there are a lot of accidents at this intersection. Discussion ensued regarding the vernal pool.

Shaun Lind, said her and her husband own 14 and 16 Cushman Street. They were approached by Mr. Logan who wanted to be able to purchase some of their property to build what they initially wanted to build. Credibility became a major factor in this whole process. There was never a deal or an agreement for them to purchase this land. The amount of material that is going to have to be brought in to build this back up is a lot.

Scott Lind said they have a business, Modern Towing, and residential land, grandkids etc. He asked if these units are going to be rentals. Mr. Logan said they will be sold. Mrs. Lind said they want protection from their property to this property. They would love to see a stockade fence. Discussion ensued regarding the fence. Shaun Lind said there are also lady slippers there and would like to know how that will be handled with all the fill coming in. Chairman Darrin DeGrazia said the fill will be mostly at the Miller Street end. Scott Lind said their biggest concern is security.

Chairman Darrin DeGrazia asked them to be more specific on what they are looking for. Shaun Lind said they would like to see a 9' stockade fence that protects their businesses and property from who know who is going in there. Chairman Darrin DeGrazia said most of these units will be fairly expensive. He doesn't believe their fear of rift-raft is totally justified in that sense. Discussion ensued regarding safety.

Nyles Zager said there is over a 100' from the back property line to the nearest proposed work, not only that there is a natural berm there as well. One other point he would like to make is that currently, if you look at the fenced in area, they currently have an area that is over the property line, which is encroaching on the applicant's property. Scott Lind said they have been using that for 28 years. This has been up kept and transferred over the years, it's been 28 years and he believes its adverse possession. Chairman Darrin DeGrazia said he believes the property owner would have to have known you were using that property. However, he is not an attorney and that would have to be worked out between them.

Chairman Darrin DeGrazia said a fence is problematic in the sense that it would offer you privacy from something that is that significant away. Shaun Lind said it would prevent access.

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Dr. Edward Braun suggested adding plantings to the existing berm.

Richard Cummings, 12 Cushman Street said another project was done near him and they came in and compacted everything down. He would like to know how much the compacting is going to be for this, and if they can put an insurance clause so he can go after people this time for all the damage done. He would also like something added that they cannot have the trucks lined up and down the road very early in the morning. Chairman Darrin DeGrazia said they can add that as a condition.

Discussion ensued regarding fencing. The board will check with the Conservation Commission regarding installing fencing for the neighbors due to the no touch area.

Chairman Darrin DeGrazia said at this point they will continue the hearing to get further information for the abutters regarding fencing. The board would also like the information regarding the amount of fill that will be brought on site, the exact amount of area that needs to be cut back from Miller Street for sight clearance, and a redesign of the common space. Hearing no further comments Chairman Darrin DeGrazia called for a motion.

Upon a motion made by Liz Elgosin and seconded by Jack Healey, the board

VOTED: *to continue the hearing until April 14, 2022.*

Chairman Darrin DeGrazia, Dr. Edward Braun, Liz Elgosin, Jack Healey and Joseph Mandile were in favor.
(5-0)

Upon a motion made by Dr. Edward Braun and seconded by Liz Elgosin, the board

VOTED: *to adjourn at 9:37 P.M.*

Chairman Darrin DeGrazia, Dr. Edward Braun, Liz Elgosin, Jack Healey and Joseph Mandile were in favor.
(5-0)