

MEETING MINUTES

Tuesday, May 28, 2019 Meeting | 7:00 p.m.

Engineering Conference Room, Woburn City Hall, 10 Common Street, Woburn, MA

Chair Dave Edmonds called the meeting to order at 7:00 pm and asked City Planner/Grant Writer Dan Orr to call the roll.

Ms. Claudia Bolgen, Mr. Jim Callahan, Mr. Michael Ventresca and Chair Dave Edmonds were present; Mr. Kevin Donovan, Ms. Carolyn Turner, and Mr. Bob Doherty were absent.

Planning Director Tina Cassidy and City Planner/Grant Writer Dan Orr were also present.

PROPOSED ZONING MAP AMENDMENT TO AMEND THE ZONING MAP OF THE CITY OF WOBURN BY REZONING A PORTION OF THE LOT SHOWN AS 69-06-17 AND THE ENTIRETY OF THE LOT SHOWN AS 69-06-18 ON THE CITY OF WOBURN ASSESSORS MAP FROM THE I-G TO THE R-2 ZONING DISTRICT (Dorothy Geary)

Attorney Mark Salvati, 10 Cedar Street, approached the Board on behalf of the Petitioner to provide background on the proposed zoning map amendment for property on Belmont Street and referenced a graphic displayed to indicate the extent of land area to be rezoned. The proposed rezoning would enable the creation of a single-family home.

Salvati further stated that the applicant intends to engage with the adjacent property owner to enable the creation of a single-family home. He stated the owner intends only to build a single-family, not a duplex.

Salvati further stated that one argument supporting the proposed zoning map amendment is that it can be characterized as moving the residential zoning district line further down a public road where all other properties are already zoned residential (R-2). This will be more in keeping with the neighborhood than would an industrial use.

Bolgen posed a series of clarifying question as to how the surrounding properties are zoned. Salvati responded by pointing out the extent of abutting property currently zoned Industrial General (I-G) that will remain zoned as such. Salvati provided clarification regarding the abutting industrially-zoned parcels.

Bolgen stated she recalls that there is a zoning requirement relative to buffer zones for land abutting industrial zoning districts. Salvati responded that the abutting industrial property owner behind this lot takes no issue with the proposed rezoning or with the idea of a single-family home and that there is a natural buffer between the two properties in the form of a significant slope to the land.

Cassidy stated that the Petitioner would be subject to a buffer zone requirement. There is a 70 foot buffer zone, in addition to the required setbacks, for any residential structure built on the Belmont Street property due to the fact that it abuts industrial land and is the subject of a rezoning after September 25, 2015 (Section 5.7.3 of the Woburn Zoning Ordinance). As a result, the burden of providing the buffer would fall to the owner of the property whose land is rezoned from industrial to residential.

Edmonds opened the public comment portion of the public hearing by asking if any audience members would like to step forward to speak for or against this matter.

PUBLIC HEARING

No members of the audience stepped forward.

Motion to close the public hearing, made by Bolgen;
Seconded by Callahan;
Motion carried, 4-0-0.

Edmonds asked the Planning Director for a recommendation. Cassidy responded that she recommends submitting a favorable recommendation to the City Council, given the existing properties zoned residential and the lack of a practical use for such a small, existing industrially-zoned parcel.

Motion to adopt the Planning Director's recommendation, made by Bolgen;
Seconded by Callahan;
Motion carried, 4-0-0.

PROPOSED ZONING TEXT AMENDMENT TO AMEND SECTION 29.5.4 OF THE WOBURN ZONING ORDINANCES (CONVERSION OF SIGNIFICANT HISTORIC BUILDING, MAXIMUM PERMITTED RESIDENTIAL DENSITY) BY DELETING FROM THE FIRST LINE "TWENTY (20) UNITS PER ACRE" AND REPLACING SAME WITH "UP TO A MAXIMUM OF FIFTEEN (15) UNITS." (Tidd Home LLC by its Attorneys Murtha Cullina LLP)

Attorney Joseph Tarby, of Murtha Cullina, 600 Unicorn Park Drive, approached the Board on behalf of the Petitioner to provide background on the proposed zoning text amendment and its intended purpose to support a project such as the conversion of the historic Tidd Home to age-restricted apartment units.

Attorney Tarby stated that, due to the lack of precise survey information, the Tidd Home property was presumed to have a had approximately 10,000 more square feet than it actually contained, resulting in a maximum allowable of number of seven (7) residential units by conversion under the current ordinance (with a 20 units/acre ceiling). Striking the current unit density language, and instead capping the number of allowable units at fifteen (15), would thus permit the conversation of the Tidd Home to proceed as originally planned.

Bolgen stated that although she is not opposed to the Tidd Home conversion project specifically, she is concerned with the potential impacts that will result from modifying the current zoning ordinance and its unknown impacts on other properties throughout the city. She questioned whether there are any other mechanisms for accomplishing the project, assuming the political will exists. Tarby responded that it does not appear that there are any options available as an alternative to seeking an amendment to the current ordinance.

Cassidy stated that the density criteria of 20 units per acre was added to the Zoning Ordinance out of concern about the densities of a number of recently-approved residential developments in the City. She questioned whether the Petitioner might seek a variance in this scenario, given the structure's unique historical nature and the lack of other financially viable uses that it could employ. Tarby responded that his experience is that it would be challenging to receive a variance from the Zoning Board of Appeals (ZBA) given the statutory criteria for hardships.

Cassidy further stated that staff has done additional research into the potential impact on eligible properties that would result if the amendment was adopted, bearing in mind that the Board must now also consider the prospect of mixed-use properties, since the Council did adopt the last amendment to make mixed-use properties eligible for conversion, in addition to residential. Staff

discovered that the list of potentially affected properties upon which the Board and City Council relied in earlier votes is far greater than initially thought. The person who requested the list asked for the right properties (e.g. those with gross floor areas over 4,000 sq. ft. and built before 1918), but the assessors provided a list based on their computation of “living area” rather than gross floor area. Though the Assessors’ office does compute “gross floor area”, they use a slightly different formula than does the Building Inspector. In short, the use of “living area” data to generate the list resulted in the list not including potentially hundreds of properties. As a result, the zoning proposal would potentially affect hundreds more properties across the City than first estimated. This is a concern for Planning staff.

Bolgen stated that she is unnerved by the potential for many more eligible properties under the proposed amendment than had been brought to the Board’s attention previously. There needs to be a solution other than amending the zoning for the City.

Cassidy stated that another alternative might be for a Special Permit process before the Zoning Board of Appeals (ZBA), which may be more equipped to handle this type of specific request.

Tarby stated that the approach of “capping” the number of allowable units in qualifying developments would likely be a much more conservative approach than the allowance of 20 units/acre. Additionally, a modification to the Special Permit approval process would require a separate amendment to the zoning code. He also quoted existing Section 29-5.1. which lists a number of dimensional regulations the Council can waive by Special Permit; density is not among those listed.

Bolgen posed a question to other members to ask whether it would be amenable to propose an unfavorable recommendation to the City Council, followed by feedback on how to ideally approach this scenario relative to preserving the Tidd Home.

Callahan stated that he would be supportive of the approach to send a letter to the City Council advocating for a unique solution that does not necessarily involve a zoning text amendment, with the understanding that that the Tidd Home project appears to fall into “gray area” not perfectly aligned with the jurisdiction of either the Planning Board or ZBA.

Ventresca stated that he has been supportive of this project from its inception; however, the proposed zoning amendment would only appear to make sense for the Tidd Home project and the Council should consider other avenues for ensuring that this project may come to fruition in a way that doesn’t have broader negative impacts.

Cassidy stated that another alternative, using the Section Attorney Tarby cited earlier, is for the City Council to modify the current Section 29.5.1 to add the word “density”.

Bolgen stated that although she firmly supports the envisioned redevelopment of the Tidd Home, from a planning perspective she does not believe the Planning Board can be supportive of this amendment and that it would be beneficial to offer the Council a few examples of alternative zoning amendments that would enable the Tidd Home project but without an unwanted, broader negative impact. Cassidy responded that she would draft such a letter and request the feedback from the Board prior to filing it.

Motion to send an unfavorable recommendation on this matter to the City Council that expresses the Planning Board’s support of the Tidd Home conversion project specifically and which suggests alternative ways to enable the Tidd home project, made by Bolgen;
Seconded by Callahan;

Chair Edmonds states that he needs to solicit public comment.

Bolgen withdrew her motion;
Callahan withdrew his second.

Edmonds opened the comment period for the public hearing by asking if any audience members would like to step forward to speak for or against this matter.

PUBLIC HEARING COMMENT

Mr. John Flaherty, Petitioner, approached the Board to offer his support for the proposed amendment. He explained that there are number of things that have to be in place to allow a residential conversion, such as the sufficiency of a living area, a kitchenette, separate bathroom facilities, and ADA accessibility. A boarding-house type of facility with shared bathrooms would not be permitted.

Mr. Art Duffy, 38 Alfred Street, approached the Board to offer his support for the proposed amendment/Tidd Home project based on Mr. Flaherty's past record of high-quality work.

Chair Edmonds asked if anyone else wished to speak. There was none.

Motion to close the public hearing, made by Bolgen;
Seconded by Callahan;
Motion carried, 4-0-0.

Motion to send an unfavorable recommendation to the City Council relative to the proposed zoning text amendment. Although the Board strongly supports the envisioned plan for the Tidd Home, the pending proposal affects many other properties we can't foresee given Planning staff's discovery about the earlier list of properties purportedly eligible. The recommendation should strongly encourage the Council to consider taking an alternative approach or invoking a creative solution that enables the Tidd Home project without creating a wholesale and highly unpredictable impact on historic properties across the City.

Seconded by Callahan;

Ventresca stated, for discussion, that the Board should emphasize its support for the specific project but not the pending zoning text amendment.

Motion carried, 4-0-0.

DISCUSSION OF POTENTIAL AMENDMENTS TO THE PLANNING BOARD'S RULES AND REGULATIONS FOR LAND SUBDIVISION

Cassidy provided an overview of the legal opinion issued by City Solicitor Ellen Callahan Doucette, which cautions the Board about making its Subdivision Rules & Regulations ("regs") too strict relative to disallowance of waivers in the interest of avoiding litigation. The Board is permitted to be more judicious in granting waivers of its regulations; however, it must be mindful of recent court rulings that have favored the developer in cases where Planning Boards have declined to grant waivers after having granted them many times previously, due to shifting the expectation of what is actually permitted.

Cassidy further stated that she intends to continue to work with Mr. Benevento and City Engineer Jay Corey to synthesize the standards for stormwater management and “Complete Streets” into a framework that might work for the subdivision approval process. Ideally, the framework would provide more flexibility to applicants.

Bolgen stated that in response to the Solicitor’s opinion regarding the implementation of new regs, she would like to consider taking a more flexible, guideline-centric approach and find out whether there are any other communities that have been successful in implementing changes to their regs that would use ADA, stormwater, and Complete Streets requirements/best practices as the basis of their subdivision evaluations. This may be the best way to approach subdivisions on a case-by-case basis without strict “unwaivable” regulations in place.

Ventresca stated that his concern is with the continuity for how subdivisions are ultimately constructed if strict construction standards are not in place.

Callahan stated that a practice that has become more common in the engineering field, as noted by Mr. Benevento, is to provide a justification for a waiver/basis for the proposed design. This is something that should be a standard practice at the time of application so that the Board is better informed as it evaluates each subdivision during the approval process.

Cassidy stated that the guideline-based approach is a relatively new way of thinking. The lack of strict construction standards may preclude the Board from having strong justification for turning down certain projects as proposed.

Bolgen stated that the waivers under the guideline-centric approach would not come from Planning Board-devised construction standards, but directly from the cited guidelines themselves, which is very different than the “waiverless” approach initially envisioned but now perhaps not legally feasible.

Cassidy stated that it will be interesting to see how adopting this different approach to the regs would prompt developers to meet with various departments prior to the Planning Board filing/approval phase.

Bolgen stated that the guideline-centric approach seems to be more appropriate to address the challenge of developing the remaining land in Woburn. The Planning Board’s regs should be more reflective of changing technologies and social and climatological shifts.

Callahan stated that the guidelines-based approach could be folded into the standards for basic design as part of the subdivision application process.

Members generally discussed the role of the Planning Board in reviewing the proposed subdivision compliance with technical guidelines and what form that could take, likely in a “box-checking” format.

Cassidy stated that she will endeavor to work on some more information on this topic, as discussed this evening, with the intent to update the Board again, likely prior to its summer recess.

APPROVAL OF MINUTES: May 14, 2019 Planning Board meeting

Motion to approve the May 14, 2019 meeting minutes, as submitted, made by Callahan;
Seconded by Bolgen;
Motion carried, 4-0-0.

PLANNING BOARD DIRECTOR UPDATE

Cassidy stated that there are some subdivision-related matters before the Board during its June meeting, including a slated extension request of time for the Highview Subdivision.

Bolgen stated that she would like to offer that the Highview developer only provide a written update, as opposed to attending the meeting in-person, due to a pending court case yet to have hearing scheduled by the Superior Court. Cassidy responded that she has asked for confirmation of the status of the pending court case from the developer (Mr. Santullo) but will also double-check whether a written update-only was offered when this matter was last before the Board.

Bolgen inquired about a status update on East Dexter Avenue. Cassidy reiterated the background research she conducted on the definitive Mylar plan review and endorsement phase to verify that an error had been made relative to the appearance of the retaining wall outside of the public right-of-way. As a next step, she is still working in consultation with the City Solicitor to develop an appropriate solution and will plan follow-up with her to request guidance. At the very least, she will be meeting with the developer and project engineer on this matter.

Bolgen asked what the downside would be to the developer if the Board did not accept the As-built plan. Cassidy responded that it does not appear that there would be much consequence to the developer for not accepting an As-built Plan in this case; there was no bond posted for this project.

Cassidy stated that one of the modifications that she would propose for the regs is to require the submission of legal documents and Mylars for signature/recordation within a specific timeframe (e.g., 90 days) as to prevent the undue passage of time prior to initiating construction on subdivision projects and unnecessary extension requests. Bolgen responded that this approach would align well with how the Board has deliberated over subdivision extension requests in recent years.

Cassidy further stated that she will be employing a new policy to require submission of subdivision plan-related materials at least one week prior to a meeting on which a matter is scheduled.

ADJOURNMENT

Seeing no further business, Bolgen made a motion to adjourn the meeting at 8:27 pm;
Seconded by Callahan;
Motion carried, 4-0-0.

The meeting adjourned at 8:27 pm.

Table of Documents Used and/or Referenced at Meeting

Planning Board Staff Report
Staff Report Attachments (Belmont Street Rezoning Petition): (1) Application materials; (2) Approved ANR Plan
Staff Report Attachments (Zoning Text Amendment to Section 29 Historic Ordinance): (1) Current version of zoning text; (2) Proposed version of zoning text amendments; (3) Eligible city properties affected by proposed ordinance
Staff Report/Meeting Attachments (Discussion of Subdivision Rules & Regulations): (1) Planning staff request letter to City Solicitor Ellen Callahan Doucette; (2) City Solicitor opinion responding to staff request letter
Draft Planning Board Meeting Minutes: May 14, 2019 meeting

Respectfully submitted,

Dan Orr

Dan Orr
City Planner/Grant Writer