

## PLANNING BOARD

DATE: November 10, 2022

TIME: 6:00 P.M.

PLACE: Hybrid In-Person/Zoom Virtual Meeting

FOR: Regular Meeting/Public Hearing

PRESENT: Brandee Nelson, via Zoom; Chair; Jonathan Hankin; Malcom Fick;

Jeremy Higa via Zoom

Associate Member Jackie Kain

Chris Rembold, Assistant Town Manager/Director of Planning and Development

Ms. Nelson called the meeting to order at 6:00 P.M. She read the opening statement, revised by Governor Baker on July 16, 2022, from the agenda. She said the meeting was being recorded.

Ms. Nelson also read Section 241-1 of the Town Code.

Ms. Nelson and Mr. Higa participated remotely. Mr. Hankin, Mr. Fick and Mr. Rembold met in person at the Town Hall.

Ms. Nelson called for roll call attendance:

Mr. Higa, present via Zoom; Mr. Hankin, present; Mr. Fick, present; Ms. Nelson, present via Zoom

The Board welcomed Ms. Kain as the Associate Member.

### **FORM A's: 120 & 140 CASTLE HILL AVENUE**

Brian Koczela from BEK Associates-Land Surveyors, was present to discuss a Form A application submitted on behalf of Mary Stephen and Jonathan Hirsch for a parcel of land located on the east side of Castle Hill Avenue. The parcel, containing 0.052 acres of land is to be conveyed from Ms. Stephen to Mr. Hirsch to correct a boundary issue.

Mr. Hankin said it is too bad the Mr. Hirsch's lot isn't being made conforming.

Mr. Koczela said this is making a bad situation better.

Mr. Hankin made a motion to endorse the Form A, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

### **MINUTES: OCTOBER 27, 2022**

Mr. Hankin made a motion to approve the minutes of October 27, 2022 as amended, Mr. Fick seconded.

Roll call vote: Mr. Higa, aye; Mr. Fick aye; Mr. Hankin, aye; Ms. Nelson, aye

### **COMMON DRIVEWAY: 101, 103 & 105 LAKE MANSFIELD ROAD**

Attorney Vicki Donahue was present via Zoom with Philip Morrison from Bard College.

Ms. Donahue said the existing lots were created by a Form A in July of 1987. She said she is not able to find a permit for a common driveway. She said the common driveway exists. She said she has gone through the bylaw requirements. She said the driveway complies with the bylaws.

Ms. Donahue said there is a declaration of the common driveway with a shared maintenance agreement.

Ms. Nelson said the declaration is for clarification of the deeds.

Ms. Donahue said yes. She said a covenant was filed with the Registry of Deeds to make clear the maintenance agreement.

There were no questions from the Board or the public.

Mr. Rembold said there were letters from the Police Department, Fire Department and DPW. All were fine with the driveway.

Mr. Hankin made a motion to approve the driveway permit, Mr. Fick seconded.

Roll call vote: Mr. Higa, aye; Mr. Hankin, aye; Mr. Fick, aye; Ms. Nelson, aye

### **PUBLIC HEARING: BARRINGTON BROOK**

Mr. Hankin made a motion to open the public hearing, Mr. Fick seconded.

Roll call vote: Mr. Higa, aye; Mr. Hankin, aye; Mr. Fick, aye; Ms. Nelson, aye

The public hearing is for an application submitted by Lenox Landings Barrington Brook Holdings, LLC for a special permit to modify the Open Space Residential Development special permit granted in February 2013 to Stone Path Development. The modified special permit is specific to the open space boundaries on Thrushwood Lane.

James Scalise from SK Design was present to discuss the application to amend the existing special permit. He said this is a fairly simple request. He said the existing permit allows for 44 units. The intent is to relocate one of the units from one place to the other.

Mr. Scalise said the request is to relocate a unit from lot 11 to lot 1. He said lot 1 will be divided into two lots, lot 1A and lot 1B. The division will be done with a Form A that can be filed right away.

Mr. Scalise said the modifications are compliant with the Master Plan cluster housing. He said the original plan has 63% open space. He said open space will be released for the unit that would be moved to lot 1. He said the open space will remain equal or greater than the 63%.

Mr. Scalise said there are no changes to the traffic impact. He said the open space to be added has tall shade trees. He said the area to be added has a slightly higher percentage of open space.

Mr. Scalise said the neighbor that abuts lot 1 imposed a 200 foot setback. He said that was a private agreement that is no longer in place as the lot has been sold to a new owner. He said the open space exceeds the 50% requirement.

Mr. Scalise updated the Board saying there are 5 houses under construction but only one certificate of occupancy is available. The rest are held in covenant.

Mr. Rembold said one more house could be built.

Mr. Scalise said the other 4 houses will need certificates of occupancy soon. He said the certificates are managed by the Town to make sure the project is finished. He said the original estimate was \$450,000 to finish the work. He said the applicant has spent \$480,000 resulting in 80% of the work being completed. He said he is requesting the certificates of occupancy be released on the 4 houses. He said there are 6 more houses to be completed that can be held in covenant.

Mr. Scalise said the landscape plan needs to be completed as well as a revised open space plan.

Ms. Nelson asked if there were questions from the Board.

Mr. Hankin said the plans that have been submitted are not accurate. He said the plans don't reflect what has been built. He said it would be nice to have the plan reflect what is on the ground.

Mr. Scalise asked if Mr. Hankin was referring to Phase 1.

Mr. Hankin said yes.

Mr. Scalise said he didn't look at Phase 1.

Mr. Hankin asked what the total land is.

Mr. Scalise said he didn't have the totals but he can get them.

Mr. Hankin said he doesn't think wetlands can be counted toward the open space requirement.

Mr. Fick said the bylaw states that wetlands and steep slopes are excluded from open space.

Mr. Scalise said he is not using wetlands for open space.

Mr. Hankin said there are 43 acres of developed land.

Mr. Scalise said he would have to go back to the drawing board. He said he was focused on the proposal for the adjustment for lot 1. He said he was not prepared to address the other questions.

Mr. Hankin said it seems like what is designated as open space has been cleared.

Mr. Scalise said there are areas cleared. He said the area around the detention basin was cleared. He said trees could be planted.

Mr. Hankin said he didn't think open space could include lawn.

Mr. Scalise said he thinks it can be used but it is up to the Board to determine.

Mr. Hankin said it would be helpful for you to survey what has been cleared.

Mr. Scalise said he did survey it.

Mr. Rembold said the open space boundary is depicted on the plan and the aerial view with a dash dot dot line. He said he was in the field and able to find most of the pins marking the open space boundaries including the above lots 14, 15, 13, 12 & 11. He said the area behind that line, behind the houses has not been cleared.

Mr. Rembold said there is a boulder line behind lots 9, 8 & 7. He said the cleared land goes to the boulder. He said beyond that the land has not been disturbed. He added that the area behind lot 6 has not been disturbed. The open space has been disturbed behind lots 4 & 5. He said lots 14 & 15 were cleared to the pins. He said the area added open space behind the detention basin has been cleared but not beyond the open space boundary. If that open space is added back in it will need to be planted.

Ms. Nelson said there needs to be a limit on the amount of disturbance. She said we tried to accommodate the developers but clearly there has been clearing beyond the open space. She said there are a lot of invasives in the cleared areas. She said the pins may have been set correctly but clearing went beyond the pins. She said she didn't think the forest will be replaced.

Ms. Nelson asked why we are being asked for more houses. She said the developer built a house on the property line of lots 10 & 11. She said she is not impressed with how the developer has performed.

Mr. Scalise said he wanted to make the Board aware of the request for the C/Os. He said we don't have to have them. He said this project has gone on too long. He said the intent is to try to get the development finished. He said we are asking for an additional unit because the plan is based on units not lots. He said it seemed reasonable to maintain the number of units. He said he thought it was reasonable to ask.

Ms. Nelson opened the hearing up for public comments.

Mrs. Mooney asked why the existing houses can't be seen in the photo.

Ms. Nelson said she believed the aerial photo was taken in 2021. She said the houses were constructed over the last 12 months.

Stanley Brown from 2 Thrushwood Lane said he has some thoughts in response to Mr. Scalise. He said the landscaping is an issue that needs to be resolved. He said it took a year and a half to get the parking lot near the pool paved but the landscaping has still not been put in.

Mr. Brown said Mr. Scalise made a comment about the development being for seniors. He said the development is for anyone who can afford it. He said he wrote a letter dated November 8 that was sent to the Board.

Mr. Brown said the Planning Board approved a plan in July 2017 that shows the open space will remain in perpetuity. Now the developer wants to be in the protected land. He said they want to relocate a house because the developer built a huge house on two lots. He said the developer made a business decision to build that house on the two lots.

Mr. Brown said most of the protected land that is proposed to be exchanged is very pretty woodlands. He said the land to be exchanged is mostly scrub and weeds. He said basically the woodlands are gone. There is now a huge mound around the detention pond, weeds and scrub. He said it is absurd to call it an exchange.

Mr. Brown said adjacent to my house there is a 5,000 square foot wooded lot to be lost. Mr. Ward said he would not take it but it looks like he will.

Mr. Brown said these are his concerns. He invited the Board to look at the continuing disregard for the protected land. He said protected land along Londonderry is used for equipment and

boulders. He said there is no plan for protecting the land. He said for these reasons the plan should be rejected.

Steven White said he is an abutter to lot 3. He said he is the first house in the development. He said he has seen the progression of the development. He said he appreciates what Mr. Brown said but he said he wants to see the project finished. He said he agrees with many of Mr. Brown's points but he said he wants it done. He said he supports the petition.

Jonathan Pevloe owner of 12 Londonderry said he abuts lot 1. He said the developer is not doing his due diligence by taking one large chunk of open space land and replacing it with little bits here and there. He asked if it is a fair exchange.

Ms. Nelson asked for comments from the Board.

Mr. Rembold said the Selectboard sent a positive recommendation. He said the Board of Health and the Conservation Commission commented that they did not have jurisdiction.

Ms. Nelson said there will be an increase in impervious surfaces. She asked if the Conservation Commission commented on that.

Mr. Rembold said they didn't have any concerns.

Mr. Scalise said he attended the meeting and there were no concerns.

Ms. Nelson asked about storm water treatment for the woodlands.

Mr. Scalise said there is a drainage study with infiltration measures.

Ms. Nelson asked if there will be long term maintenance.

Mr. Scalise said yes in accordance with the maintenance plan. He said he can only prepare the documents.

Ms. Nelson said she has concerns about the construction.

Mr. Scalise said the work needs to be done. He said some work has been neglected in the project. He said the focus is now on lot 1 development. He said when the grading is done for lot 1 a detention basin will be done at that time. He said he can make the storm water work with a house on lot 1.

Mr. Hankin said it worked without a house.

Mr. Fick said there are 4 C/Os being held. The developer wants to add another lot but there are concerns about the open space. He said landscape plan needs to be completed and the concerns of the abutters need to be addressed.

Mr. Scalise said the landscape work can be implemented.

Ms. Kain asked what the difference is between a landscape plan and open space maintenance.

Mr. Scalise said a management plan forester walked the property and submitted a plan showing the undeveloped forest. The plan is intended to make sure the forest stays healthy. He said the landscape plan is for tree plantings and beautification.

Ms. Nelson said it looks like there has been clearing beyond the open space boundary

Mr. Rembold said he walked the land and saw the pins. He said there were no trees cut beyond the boundary. He said there was clearing to the pins but not beyond

Ms. Nelson asked if there is bittersweet or other invasives.

Mr. Rembold said there will be but beyond the boulders it is clear to walk. He said it will get worse if not dealt with.

Mr. Scalise said he will review the landscape plan and prepare additional plans for landscaping and open space. He said he will follow through with the open space that hasn't been followed through with. He said he can come back with that information for discussion.

Ms. Nelson said there needs to be more justification for the additional lot beyond the developer building on two lots.

Mr. Fick said he didn't have an issue with the change of lots.

Mr. Hankin said this is a significant request.

Mr. Fick said there is nothing wrong with asking. He said he doesn't have an objection in principle. He said he is concerned about something else delaying the project. He said we would like to see it completed.

Ms. Nelson said to Mr. Scalise that this project has taken an extraordinary amount of time. She asked that a schedule of completion be provided.

Mr. Brown said not granting the right to build a new house on protected land won't delay the project. A landscape plan won't substitute the large trees that were to have been protected in perpetuity.

Ms. Nelson newly planted trees need to be protected until they get large.

Mr. Higa asked if the open space management plan goes to the Homeowners Association.

Mr. Scalise said ultimately yes. He said there is an HOA for the Phase 1 part of the development. He said Phase 2 has 10 units developed with several units not occupied.

Mr. Brown said there are HOAs or trust agreements. There is one for the overall development; there is another for the Estates and another for the Cottages. He said the Estates remains in the hands of the builder because not enough homes have been sold.

Mr. Higa said it appears most of the trees on lot 1 are still there. He said there are trees in front of the proposed house area.

Mr. Rembold said yes. He said the trees are proposed to be removed on lot 1 near the intersection with Thrushwood.

Mr. Scalise said a common driveway could be put in to save trees if that is not a negative proposal.

Ms. Nelson said it is not a negative proposal.

Mr. Scalise said the trees can be saved between the future house and the abutter. He said if we save some evergreens with a common driveway we can protect critical open space.

Mr. Higa asked if additional trees are proposed as part of the landscape plan or in the original plan or in the new open space.

Mr. Scalise said yes. He said areas of work include dealing with vegetation on the site, open space, landscaping and maintenance.

Mr. Rembold said to call new areas open space may require remediation.



Mr. Higa asked if the HOAs will take on dealing with invasives. He said that can get expensive. Ms. Nelson said the maintenance of the open space will be in the area that has been cleared.

Mr. Hankin asked Mr. Scalise to correct the spelling of Londonderry. He asked about the lot behind Fairview Commons.

Mr. Scalise said there are title issues with that lot. He said it is a separate piece of property. It is not part of the project so it is not open space for the project.

Ms. Nelson said there is a recommended tree list that can be referred to for the landscaping plan.

Mr. Rembold said he thinks there is an approved tree list in the subdivision plan.

Mr. Hankin made a motion to continue the public hearing to January 12, 2023 at 6:00 PM at the Town Hall, Mr. Fick seconded.

Roll call vote: Mr. Higa, aye; Mr. Hankin, aye; Mr. Fick, aye; Ms. Nelson, aye

Mr. Rembold took Mr. Scalise's outline for the partial release request.

Mr. Scalise said there is no urgency.

#### **ZONING AMENDMENTS:**

Mr. Rembold has tried to incorporate Mr. Pachano's ideas with B2X amendments. He said he tried to combine those ideas to bring everything together. He said the zoning would include mixed use and housing and an overlay zone that says the mixed use is by-right. He said the zone would run from Belcher square north to Jenifer House Commons and Holiday Inn. He said north of that is not able to be developed. He said that in return for allowing development by-right (with SPR), there will be a density requirement and a requirement for 20% of the units to be rented to people making less than 100% of AMI. He said from there additional benefits could be given when there are benefits for the Town. He said the basis is to be a give and take process.

Mr. Rembold said his ideas are in the side bar of the document. He said there are some considerations to look at on page 3. He suggested revising the tree requirement from 1 tree every 25 feet to one for each 50'. He said the requirements for open space, lighting, design and parking need to be considered. He said some overlay ideas would be useful as well as design standards. He said these are my ideas.

Ms. Nelson said the overlay would put consistency in the code.

Mr. Rembold said there are several smart growth sub-zones. This could be added as a sub-zone but it would come with the smart growth requirements in 40R. He said he thought the language was too clunky to put in 9.13 but if the Board and the people like it there he can expand 9.13.

Mr. Hankin said the existing zoning remains. The overlay would apply if there is affordable housing.

Ms. Nelson said this is a lot to think about. She said we set aside November 22 to discuss the zoning. She asked the Board members to read through the text in detail. She asked that the considerations at the bottom of the page be looked at as well as a possible alternative to the Route 7 landscaping. She said we will take this up again at the meeting on November 22.

Mr. Fick said the Route 7 landscaping was changed at the Town Meeting from fifty feet between trees to twenty-five feet between trees. He said we could come up with some examples of some of the issues we ran into.

Mr. Rembold said the trees on Main Street are 25 feet apart but the trees are smaller. He said Stockbridge Road is a wide corridor so maybe larger trees should go in to soften a bigger building.

Mr. Hankin said the language included a front yard but the B2X does not include a front yard.

Ms. Nelson said the B2X had a precedent of a zero set back, this area does not.

Mr. Fick said the right of way is wide.

Mr. Rembold said the west side of the road has a right of way from 5 to 10 feet. He said the right of way on the east side goes to the back of the sidewalk.

#### **BOARD & SUB-COMMITTEE/ISSUES & CONCERNS:**

Mr. Fick said the Housing Sub-Committee is making process on a worksheet. He said the sub-committee is trying to categorize the housing and prioritize what exists to get to a comprehensive list.

Mr. Higa said the CPC went through the Step 1 applications. He said the next meeting to discuss the Step 2 applications hasn't been set.

Mr. Higa said he went to the Berkshire Habitat meeting that discussed the North Plain Road project. He said there were potential homeowners present. He said it was a successful meeting.

**TOWN PLANNER'S REPORT:**

Mr. Rembold said he didn't have a report.

**CITIZEN'S SPEAK TIME:**

No one spoke.

Having concluded the business, Ms. Nelson adjourned without objection at 7:48 PM.

Respectfully submitted,

*Kimberly L. Shaw*

Kimberly L. Shaw  
Planning Board Secretary