Maren Toohill

From: Maren Toohill
Sent: Monday, November 04, 2019 9:21 AM
To: 'Mark Gallagher'; Michelle Cobleigh; Mark Bobrowski; Mark Gallagher; Amy Green
Subject: RE: Healey Corner Special Permit

Thank you for your comments. Your comments will be made available to the Planning Board for the continued Public Hearing for the Healy Corner applications on November. 7.
Any further questions, please let me know.
Maren

Maren A. Toohill, AICP
Town Planner
978/540-2425
MToohill@littletonma.org
Town of Littleton

From: Mark Gallagher [mailto:mgallagher@seal-harbor.com]
Sent: Sunday, November 03, 2019 9:12 PM
To: Maren Toohill <MToohill@littletonma.org>; Michelle Cobleigh <mcobleigh@littletonma.org>; Mark Bobrowski <mark@bbhlaw.net>; Mark Gallagher <mgsealharbor@gmail.com>; Amy Green <agreen@littletonma.org>
Subject: Healey Corner Special Permit

Good Morning Maren, Amy and Michelle;

Maren; As you know from our meeting on Wednesday October 16th, I continue to be concerned about the zoning review's of the different plans submitted by the applicant. The newest submission plan submitted the week of October 27th appears to try and correct the zoning shortfall the prior plans represented. Unfortunately, there are still more flaws in the "By right plan" which was re-submitted late last week. Based upon these shortfalls (listed below) the plan should be rejected as a basis for the requested density and as the "by right plan" which any decision by the Planning Board or the Conservation Committee rely upon, until the applicant submits a plan which meets as a minimum the Littleton zoning Bylaw, Sub division rules and regulations as a basis for committee's review.

History;

During our meeting in October, I spoke with you about the zoning shortfalls my team found when we reviewed the initial plans, which the open space plan/special permit were based upon. At our meeting, you asked if I wanted the Board to go back and review the preliminary sub division plans submitted last fall. In turn, I asked how we should proceed, knowing there were shortfalls in the initial submitted plan? When we concluded our meeting, I asked to have you provide us a written opinion, from your office, after review of the plans, that the plans as submitted met the zoning bylaws. You indicated you would not provide us with any answer's to our questions in writing or an opinion on zoning because it wasn't your job. I explained to you at that time that I thought this position diminished my appeal opportunities. I left wondering who was responsible for zoning review and who would provide an opinion on whether the plans met the zoning bylaws?

Now that we know the prior plan had flaw's and was NOT reviewed for zoning, I believe the existing effort to review the plans and move towards an approval needs to stop, until and at which time a thorough review of the most recent plan is reviewed and determined to be compliant. Here is our premise;

October 10th 2019;

During our meeting, I pointed out the shortfalls we suspected were missed in the zoning review, specifically as they related to the reduced frontage lots as well as being compliant as a "by right plan". It became apparent that the plans had not received a **zoning review** and were accepted as "factual" by the Planning Board, when they discussed and negotiated the density the applicant would be using as he moved from a standard "by right " sub division to an open space plan. The decision to move forward with an open space plan and the density appears to be incorrect at that time and more importantly occurred without review of the plan or involvement by the neighbors and direct abbuttors. I thought coming into the meeting that you were the reviewing authority for the Town. You indicated it was in fact the Planning Board who reviewed plans for zoning compliance, not you or your consultant. Unless the Planning Board held workshops which were not publicized, our premise from reviewing the meeting tapes is there was **no zoning review** provided for the initial plans or for the plans submitted thereafter.

The flaw in the process was and is that the existing plan submitted and subsequent plans which are built upon the first plan, do not meet zoning. Because of this flaw, any plan which is being considered for approval will be flawed and susceptible to an appeal. Over the course of 12 months, the applicant has submitted several plans for review and approval, ALL based upon the initial "by right" sub division plan submitted and discussed in 2018 and into February of 2019. The recent opinion by the zoning officer for the Town found the plan did not meet one section of the zoning bylaw on several lots.

During the last Planning Board and Conservation meetings, the applicants engineer disagreed with the zoning officer's opinion. However, based upon the writings of the Zoning Officer and submission of a "new plan" by the applicant last week, it would appear they have accepted the Zoning Offices Opinion. The changes to the new plan however create new concern's and zoning violations or shortfalls many of which were also embedded in the prior plans. In an effort to "keep things going" the applicant and his Engineer have not provided the Planning Board a "By right plan" which meets zoning and the submission requirements of the sub division rules and regulations as well as the check list for application for an Open Space Special permit. This is the continuing crux of the problems with

reviewing an open space special permit based upon a plan the Planning Board accepted (which was flawed) and continues to be flawed after re-submission. The density for an open space permit is derived from the "by right" plan as you know. When the underlying plan changes, it needs to meet all of the requirements of the zoning bylaw and the sub division rules and special permit regulations, not just address the shortfall we pointed out . The applicant cannot apply for or receive any relief from these requirements through the Planning Board. The plans must be determined to be compliant to move forward.

As an abuttor and adversary to the existing density and plan presented by the applicant, I find the fact that important steps in the reviewing process are being ignored or waived for this Applicant. As I have stated throughout the review, this Applicant should not receive any special treatment or be provided a different (lower) level of reviews as opposed to any project which was reviewed prior to their submission or in the future. Further, the Planning Board should, and I am asking the Board through this letter as well as the conservation committee, to stop the existing review, to allow a full zoning review on the "by right" plan, and re-start the process of negotiating density and lot layout when and if the applicant can provide a plan to meet these standards. At that point "if" an open space special permit/plan is the correct decision, given the new and ongoing information stream the process could start over and be transparent to the neighbors, abbuttors and Boards . By re-starting the process, the neighbors can be included from the inception of the review to discuss the decision on density once a plan is vetted and the Town insure's that the lots shown are available "by right" and can meet the litmus tests required from Zoning, Planning, Conservation and the Board of Health. More importantly; whether the Town and the neighborhood is better served by a standard sub division approach or movement to an Open Space Special Permit. By not revisiting this decision from the sub division review, the Town has denied the neighborhood their right to discuss the benefits of this approach and created a basis for appeal on a go forward basis.

Here are our teams comments and review of the "newest" plan submitted last week by the applicant;

It appears that the applicant has addressed the frontage issue's we brought forward in our previous correspondence by adding the dimensions of the lot widths (so access necks do not abut another reduced frontage lot) and massaging the lot layout of the effected lots. However, the applicants calculations of lot shape cannot be verified because some of the lots are not fully dimensioned. It appears that Lot #5 and #12 do not meet the shape factor. the requirement is .040 as a minimum. they should be disqualified until they meet or exceed this requirement.

There are multiple lots which cannot access their own build-able area without a wetlands alteration, requiring the use of common or shared driveways. Under the zoning ordinance this require's a **special permit** from the Planning Board. Under Zoning, Article XX Shared Residential Driveways, section 173-126D.

D. Where the access to structures or uses provided by the driveway is substantially different than that which would be provided through required lot frontages, the special permit shall not be issued unless the Planning Board finds that the proposed shared driveway and its location are in the public interest.

The "By right Plan" is not supposed to require any **special permits or waiver's** in determining density. By providing the existing plan as a basis for the "By right plan" the plan does not meet the above zoning article and the lots effected should be disqualified.

This includes the following lot's; #5,#9, #14 as a minimum

Further Lot configuration's requiring shared driveways would not meet this criteria, especially if an alternative with fewer lots would not require a shared driveway with special permits. Shared driveways have criteria with turnouts, turn around's and a maximum length of 750' which several of the lots shown on the new plan cannot meet. These lots should be disqualified.

The Conservation Commission could legitimately and should turn down any wetlands crossings shown on this plan, since the project is not a limited project and the applicant has created their own hardship with their lot line configurations to support their target density. As an example; Lot 5's and Lot #14's driveway could not be permitted and meet the requirement of wetland alterations under 5,000 s.f.

The Wetlands Protection Act allows wetlands alterations up to 5,000 s.f. More than 5,000 s.f., except as a limited project, would require a waiver of the law which also triggers MEPA. This is highly unlikely to be approved given the fact that this is only a residential subdivision with no true hardship or a hardship brought on by the Applicant to meet their target density. This would effect more of the lots shown on the plan.

The Town of Littleton's Wetlands by-law does not allow any disturbance within 50' of the wetlands. Some of the septic shown on the plan are just (Barely) outside the 50' limit (as allowed by Title 5) Unfortunately the Applicant has not shown the true size of the septic systems on the plan. Given the high water table and low percolation rates it is highly unlikely that the grading on these systems would not extend into the 50' no disturb area. The Nashoba Board of Health's letter also supports this requirement and shortfall. This would disqualify the lots where this occurs; This appears to effect Lots # 5, #7,#9,#11 and #14 as a minimum.

When you compare the Edge of Wetlands from the Conventional Subdivision to the Master Plan in the subdivision plan set, The edge of wetlands do not appear to be the same shapes and configurations. There are several discrepancies at a minimum:

1. There is a finger like projection of wetlands (flag no. OA-K-29 to OA-K-35) on the Master Plan which would be on Lot 12 which is not shown.

2. The Vernal Pool on the abutting property is not shown (This require's a minimum of a 100' no disturbance around Vernal Pool) This would disqualify Lot # 12's septic location.

3. The upland area on lot 14 (closest to Lot 5) does not appear to be the same shape as on the Master Plan.

Key to these discrepancies is the net impact on the amount of disturbances into the 50' no disturbance and the amount of wetlands alterations to meet this plan.

The concept shows the Storm-water Management area within the wetlands on lots 8 and 9. This is not allowed and disqualifies the lot

It also shows Lot 11's septic systems within 50' of the storm-water basin – This is not allowed and disqualifies the lot

It shows lot #13 septic system within 200' of the River front set back-This is not allowed without special permitting and disqualifies the lot

There is **No testing** shown on this plan to support the system locations or requirements of the "proof plan" on lot's # 5, #7 and #14. This is not allowed and disqualifies the lot's

The soils maps show's Paxton soils which often yield failing percolation tests and high groundwater levels. A typical system in this area (307 Harwood as an example) is 3 trenches, 58' in length. The system takes up more than 5000 square feet in size. By eye, some of these "septic areas" are questionable using the system at 307 Harwood as an example. The systems shown are variable in size and number of trenches, with no systems shown anywhere near the actual size required to support the testing and Title 5 requirements. Further all systems must meet the 4 bedroom requirement on each individual lot.

Lot #7's house is in the 50' no disturbance zone. This is not allowed and disqualifies the house location and possibly the lot

In summary there are a lot of zoning question's/ shortfall's which the newest plan from the applicant brings forward. From the above review which is cursory, there are up to (7) lots (#5,7,8,9,11,13 and 14) which do not meet the zoning ordinance, Sub division rules and regulations and other laws required to be accepted as a "by right" or yield plan as required.

It would seem prudent to hold any further decisions on the applications by the Applicant until a plan can be created which meets all of the requirements of submission including all zoning requirements, sub division requirements, conservation requirements, Board of Health requirements to create a viable "by right" plan. At that point the applicant should be required to start the process over to insure the integrity of the process, given the stature of the applicant and his oversight of many of the staff and Board personnel.

Its clear from the continuing submissions that the property, because of many physical and environmental characteristics, do not support the density being sought by the applicant.

Thanks you in advance for your time in this matter.

Mark M Gallagher

307 Harwood Ave

Littleton, Mass 01460