

PLANNING BOARD MINUTES  
MEETING OF JANUARY 18, 2006

A regular meeting of the Lexington Planning Board held in the Cary Hall Auditorium was called to order at 7:30 p.m. by Chairman Manz with members Galaitis, Hornig, Canale, Harden and planning staff McCall-Taylor, Schilt and Tap present.

\*\*\*\*\* LEXINGTON CENTER INITIATIVES \*\*\*\*\*

Report from the Center Committee on proposed Prince Estabrook Way: Mr. Carl Oldenburg, Design Advisory Committee and Mr. Fred Johnson and Mr. Howard Levin, Lexington Center Committee, presented plans for a Center Committee connectivity undertaking for which they are seeking the Planning Board's support. It would create a pedestrian walkway—to be named Prince Estabrook Way in honor of Mr. Prince Estabrook, who played a part in Lexington's revolutionary war history—along the current vehicular way between the Carlson Real Estate office and the Bank of America on Massachusetts Avenue. Referring to it as their flagship project, it is designed to be a welcoming and attractive walkway between the bike path and parking lots behind the businesses and Massachusetts Avenue. The area would have brick paving, landscaping, lighting similar to that at Emory Park, and some benches. It would require some reconfiguration, including leveling of the existing surfaces. The committee expects to work with the owners of the office condominiums and bank that flank the driveway. They have been in communication with the Town Manager and Mr. Bill Hadley, Director of Public Works, has indicated that his department would do its part in connection with the project. More bike racks may be needed as well.

The Board raised a number of concerns: who would maintain the walkway, if parking spaces would be lost, the potential for pedestrian/car mishaps, and accessibility. Mr. Johnson indicated that these issues are being considered as plans evolve. They do not want to take away any legal parking spaces. Those along the vehicular way are not legal spaces.

On a motion duly made and seconded, it was voted to support the connectivity proposal for Prince Estabrook Way as is it developing and to send a letter of support to the Center Committee.

\*\*\*\*\* ARTICLES FOR 2006 TOWN MEETING \*\*\*\*\*

PUBLIC INFORMATION MEETING

Ms. Manz opened the public information meeting at 7:55 p.m. on the Planning Board's proposed amendment to the Zoning By-Law to require Inclusionary Housing. She indicated that there were copies of the draft document available to help follow the presentation and that the Board hoped to receive public reaction and input on the proposed amendment. There were 20 people in the audience.

Mr. Harden noted that he has been the Planning Board liaison to the Housing Partnership Board since its formation, and that the Partnership, along with consultant Philip B. Herr, produced the particular inclusionary concept that the Board is developing and will bring to Town Meeting this year.

Mr. Harden's presentation described the Town's commitment to preserving and providing affordable housing in Lexington over the years. The Board has had an inclusionary housing policy since 1985 as part of the housing element of the Comprehensive Plan. It became the basis of dialogue with developers about providing affordable units in new subdivisions. The policy was reaffirmed in the 2002 Comprehensive Plan. But only seven units of affordable housing have resulted from the Planning Board's special permit discretion in the past five years. The proposed inclusionary amendment would require an affordable component in new subdivisions with three or more dwelling units, which require a special permit with site plan review.

Mr. Harden briefly outlined the inclusionary housing concept, noting that many other communities in the state and the nation have implemented similar provisions. The presentation provided an overview of what

the bylaw would require, the definition of an affordable unit, applicable thresholds, design considerations, the ability for developers to provide units off-site, accessory apartments, marketing and eligibility of qualified owners and renters, and resale restrictions.

**Audience Comments and Questions:** Mr. Frank Sandy, town meeting member (TMM), Precinct 6, asked what would determine the size of the affordable unit in a subdivision and if the owner could add on to it. The response was that it would be roughly comparable in number of bedrooms but not necessarily in size to the market rate units. A unit owner would have to ask the Board for an amendment to the special permit if he wished to add on. Mr. Sandy further inquired whether developers would opt to build smaller units in order to minimize their costs. Ms. Manz replied that the special permit would give the Planning Board discretion to evaluate the size of the affordable units.

Ms. Kay Tiffany, 109 Reed Street, stated that the amendment would unfairly penalize a small number of landowners who decide to develop their land in the future, as it would negatively affect their land prices. She added that the burden for providing affordable housing should be placed on everyone, and not just a select few.

Mr. Ron O'Brien, Meridian Engineering Associates, commented on the flexibility offered to developers in the amendment, namely, a range of affordability levels, the ability to provide affordable units off-site. He suggested there be an opportunity to create some additional units to provide funding of the affordable units.

Ms. Tiffany further inquired why the amendment was being proposed when the Community Preservation Act, if approved by voters, would provide funds that could be used on affordable housing. Mr. Harden stated that the need for affordable housing continues to grow. The Planning Board sees firsthand the impacts on the housing market on Lexington's housing stock of the subdivisions it reviews, and diversity in housing will continue to decline as the town faces long-term build-out.

Mr. Sandy inquired about the provisions for accessory apartments, and what would happen if homeowners choose not to rent them. Mr. Hornig stated that there would be a regulatory agreement required for all affordable units that would be monitored on an annual basis, or at the time of resale for owner-occupied units. He further noted that accessory apartments were unlikely to be utilized as inclusionary units, but because of their small size they already provide a type of affordable housing opportunity.

Mr. Doug Lees, Land Engineering, noted that affordable units are already expected by the Planning Board in cluster subdivisions. The inclusionary requirements, without allowing some density bonus in conventional developments, would cost developers more.

Ms. Jane Pagett, TMM, Precinct 6, asked who would administer this and if more staff would be needed. Mr. Harden responded that the Planning Department would likely perform those duties but that this will have to be figured out over time. It was noted that the Planning Director had included a request for a Housing Specialist in her 2007 budget, that such a specialist is needed now, even without an inclusionary housing by-law. Mr. Harden added that affordable housing is a resource that needs to be managed now and in the future.

Mr. Michael Martignetti, local developer, asked if the owners of the properties likely to be affected would be notified. Ms. Manz said that there was no obligation to do so and adequate notice had been posted. Mr. Canale pointed out that developers piece together small lots to form larger ones so it isn't known which lots would be affected and it is a mistake to say that this just affects existing large parcels.

Mr. Harden said that Special Permit discretion enables the Board to weigh a number of considerations as it tries to achieve the most desirable outcomes in development projects. There are other regulations that apply through the special permit process that determine site constraints. Some of the impacts are not based on development costs or property values, but rather are environmental constraints. The Planning Board tries to do the right thing with respect to the bigger picture in each set of circumstances. Lexington is a very desirable community because the right decisions have been made over the years that provide benefits for everyone in the community.

Ms. Manz noted that the Zoning By-Law limits many things, and it does so for the common good. While this provision is new and will make a difference to some people, it is not inherently different from other zoning requirements. Long term property owners have seen a dramatic increase in their property values, which is an aspect of the real estate market that is impossible to predict. No property owner is guaranteed a particular return on their property. There is always a before and after for each change to the by-law.

Kay Tiffany stated that social needs should not be addressed through land use, and that the by-law should be reconsidered.

The public information meeting ended at 9:30 p.m.

The Planning Board discussed what they had heard tonight from the audience. Mr. Hornig stated that the by-law needed simplification, and that some aspects leave too much discretion to the Planning Board; there should be clear guidelines with provisions to make some of the requirements by right. Referring to a concern expressed tonight that an affordable unit would not be kept up by the owner, Mr. Galaitis suggested that subdivision homeowners associations should be made responsible for maintaining the external appearance of affordable units and share the cost. Mr. Harden and Ms. Manz questioned the fairness of this and expressed doubt that the issue would even arise.

Mr. Hornig suggested that for the by-law to be palatable to Town Meeting, the requirement to include the affordable units on-site should apply to subdivisions with eight or more units. Ms. Manz stated her support for providing units off-site as a way to preserve existing housing stock in town. Mr. Hornig suggested a number of edits to clarify various sections of the motion and to eliminate some of the discretionary provisions.

Mr. Canale inquired about the Board's discretion for approving the use of off-site units in existing multi-family developments. Mr. Hornig stated that the developer should not be allowed to purchase a unit that is already price restricted. Ms. Manz asked if a deed restriction could prevent a house from being torn down. Mr. Harden noted that a deed restriction could limit what happens on the property; it would run with the land and not the particular housing unit.

Mr. Hornig volunteered to present the article at Town Meeting.

Mr. Phil Herr, land use consultant, indicated that of the issues raised tonight the one of the inclusionary requirement being an unfair burden would resonate the most. As currently written there was no give back or incentive. He urged the Board to consider some sort of relief, most likely in the form of a density bonus. Mr. Ken Kreutziger, Housing Partnership Board, stated that in response to the question of maintaining an affordable unit, there was no minimum value guaranteed so there would still be incentive to maintain the unit. He added that different regulations overtime affect land values, which change from year to year.

Mr. Harden inquired about givebacks to developers in terms of the requirements for approving affordable

housing as a public benefit in a development with significant public benefits. Ms. McCall-Taylor indicated that the affordable units under the 15-percent requirement for the inclusionary units would not be considered as a public benefit, only those affordable units provided above the required number. Mr. Hornig suggested that a density bonus be allowed if a developer provides more than the 15 percent required.

Center Parking Amendment

Ms. Manz stated that the proposed amendment to the Zoning By-Law pertaining to parking in the Center has raised some questions about the legality of allowing commercial parking as an accessory use on institutional lots in residential districts, in particular the Town’s use of permit parking on the lot at the Church of the Redeemer on Meriam Street.

Ms. McCall-Taylor reported that staff has researched the legality of the parking spaces in lots which are in residential zones near the center business district. In the current by-law the use of the spaces for commercial purposes in a residential zone is not allowed, but previous versions of the by-law did permit parking as an accessory use. The current leasing of parking spaces at the Church of the Redeemer and the Arts and Crafts Society are considered a legal non-conforming use. It is presumed that the system of permitting and renting the spaces in these and other lots, which was the result of a long and very public process involving the Board of Selectmen and Town Meeting, was conforming at the time, and therefore the use of the lots for rental space in a legal non-conforming use now.

Mr. Hornig inquired as to whether residential driveways could be leased for commercial parking. Ms. McCall-Taylor replied that Town Counsel's opinion is that property owners could not be legally rent their residential driveways for parking.

The Board affirmed its previous vote to go forward with the Center Parking by-law amendment.

\*\*\*\*\* REPORTS \*\*\*\*\*

**Staff Reports**

Zoning Enforcement Officer Resigns: Mr. Matt Hakala, Lexington's zoning enforcement officer for the last several years, resigned this week having taken a job in Westford. The Planning staff will help to answer zoning questions from the public until his replacement is hired.

Marrett-Spring-Bridge Intersection, Phase II: Consultants from Howard/Stein-Hudson will present the results of their work on Phase I of the Marrett-Spring-Bridge intersection study. They conducted a workshop for stakeholders in June of last year and to kick-off Phase II will present the three intersection improvement schemes coming out of that workshop. Stakeholders will be invited to a public meeting to see and comment on the potential design solutions. The cost of a newspaper announcement about the public meeting is being investigated at present. It would be paid for out of the Planning Department budget. Notices will also be mailed to people in the vicinity of the intersection and to others who have asked to kept informed.

On a motion duly made and seconded, it was voted to adjourn the meeting at 10:50 p.m.

Anthony G. Galaitsis, Clerk