



TOWN OF BURLINGTON, MA
PLANNING BOARD MINUTES
APRIL 21, 2022

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- Board Members Present:** Chairman Brenda Rappaport; Vice Chairman William Gaffney; Clerk Paul Raymond; Joseph A. Impemba (attending remotely); and Barbara G. L'Heureux
- Board Members Absent:** Ernest Covino
- Staff Members Present:** Planning Director Kristin Kassner and Senior Planner Elizabeth Bonventre

1. Call the Meeting of the Planning Board to Order

Chairman Rappaport called the meeting to order at 7:00 PM. The Town of Burlington will be holding the April 21, 2022 meeting of the Planning Board as a hybrid meeting due to the current State of Emergency due to the Covid-19 virus. As such, the Governor issued an executive order on March 12, 2020 authorizing remote meetings under G.L c. 30A Section 20.

Ms. Bonventre stated that the option for remote participation via WebEx is being provided as a courtesy to the public. The public can join the meeting via the WebEx link posted on the Town's website, or they can call in by dialing 617-315-0704. The meeting is being broadcast live on BCAT, and on cable networks and residents can email questions to Planning@burlington.org or on Facebook live.

2. Citizens Time

No citizens came forward.

3. Announcements

Ms. Bonventre read the announcements. The ZBRC Signage Subcommittee will take place on April 26 via Zoom. The Housing Partnership is doing a Townwide Forum for their Housing Needs Assessment and that's on April 27 from 7:30 – 9:00 PM via Zoom (register ahead of time at <https://tinyurl.com/BulingtonHNA>). There will be a Townwide Yard Sale on April 30 from 9:00 AM – 2:00 PM. The Town Meeting is scheduled for May 9 at 7:30 PM in the High School Auditorium. The Sculpture Park Committee will be having meeting on May 14 from 10:00 AM – 12:00 PM. Member L'Heureux stated that more details will come in the weeks to come.

Chairman Rappaport stated that Burlington Parks & Recreation and herself are sponsoring the Townwide Yard Sale. There's over 40 vendors and registration is closed.

4. Legal Notices of Interest

There were no legal notices.



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5. Non-Approvals

There were no non-approvals.

MOTION – Member L’Heureux made a motion to take item “7.d” out of order for discussion purposes. The motion was seconded by Vice Chairman Gaffney and voted 5-0-0.

7.d Public Hearing – Application for Approval of a Special Permit pursuant to Section 4.2.6.9 “Fast Order Food Establishments” of the Zoning Bylaws – 120 Cambridge Street – Khatra & Hirani Realty Group, LLC, Applicant

Niteen Khatra of Khatra & Hirani Realty Group, LLC appeared for the application.

Mr. Khatra stated that he is looking to open a fast order food establishment to be known as Foodland at 120 Cambridge Street. A lot of customers have suggested a takeout only type of restaurant due to traffic.

Ms. Kassner stated that we need to ensure that the dumpsters will be enclosed on site, and order control devices in the vent hoods and/or roof vents because the site is close to a residential neighborhood. There are no seats associated with this.

Member L’Heureux asked if they intend to have any designated parking. Mr. Khatra replied no.

Chairman Rappaport asked if they only going to sell the prepared foods out of that facility or sell any of the same products in Spiceland. Mr. Khatra replied no.

MOTION – Member L’Heureux made a motion to close the public hearing on this matter. The motion was seconded by Vice Chairman Gaffney and voted 5-0-0.

MOTION – Member L’Heureux made a motion to approve the request of Khatra & Hirani Realty Group, LLC for a Special Permit pursuant to Section 4.2.6.9 “Fast Order Food Establishments” of the Zoning Bylaws to permit the operation of a fast-order food establishment with zero (0) seats, for property located in the General Business (BG) and Water Resources (WR) zoning Districts located at 120 Cambridge Street, subject to the terms and conditions contained in exhibit “A” as printed. The motion was seconded by Vice Chairman Gaffney and voted 5-0-0.

MOTION – Member L’Heureux made a motion to take item “7.e” out of order for discussion purposes. The motion was seconded by Vice Chairman Gaffney and voted 5-0-0.

7.e Public Hearing – Application for Approval of a Special Permit pursuant to Section 4.2.6.2 “Convenience food stores, drugstores, retail stores for sale of beauty and health aids, smoking supplies, periodicals; none with the sale of food intended for consumption on the premises” of the Zoning Bylaws – 226 Cambridge Street – Burlington Smoke Shop Inc., Applicant



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Attorney Thomas Murphy and Sam Patel, owner of Burlington Smoke Shop Inc., appeared for the application.

Mr. Murphy stated that since the last Meeting, Mr. Patel has proposed exterior modifications (i.e., black valances over the windows) and has agreed to change the name of the establishment to Binsky's Cigar Shop. The shop will sell a wide range of cigars (in both price and origin) as well as other tobacco-related products.

Chairman Rappaport asked what triggers these doors being locked. Mr. Murphy replied that you can't sell tobacco products or vaping products to someone under the age of 21, but there's nothing to prevent individuals under 21 from coming into the shop. This is a way to alleviate potential concerns. Mr. Patel described it as a "safety mechanism." Chairman Rappaport then asked if they could confirm that no products will be visible from the windows. Mr. Patel replied we're not looking to display anything on the windows. The shop will not be a lounge where someone (after purchasing a product) will walk around the facility and/or sit down and start smoking.

Vice Chairman Gaffney stated that this requires a Special Permit because of the intent of selling smoking supplies and asked if the other two locations in Town got Special Permits. Ms. Kassner replied that it needs a Special Permit because it's a convenience store in the Town Center. The location on Middlesex Turnpike didn't necessarily need the Special Permit. Vice Chairman Gaffney then asked whether or not we could condition it to any specific items being sold. Ms. Kassner replied that the Special Permit is on the operation. You can condition it to the extent that it has to do with social economic or community needs, traffic flow and safety, adequacy of utilities and public services, neighborhood character and social structures, impacts to the natural environment, and fiscal impact including the impact on town services. You can control the interior of the space to the extent that it's viewed from the exterior. You cannot control the interior of the space that doesn't interact with the outside.

Ms. Kassner stated that there's a requirement that 30 feet is the distance that you can't smoke from any place and asked if this was discussed with the Board of Health. Mr. Patel replied that we will control that. At the Beverly location, I haven't seen anyone stand outside smoking after purchasing their product. We could put a sign on the window on both sides that reads: "No smoking here."

Ms. Bonventre read the correspondence the Planning Department received. The abutters don't think that this use is particularly family-friendly, and they wouldn't want their kids walking past a smoke shop.

Member Impemba stated that his main concern is that the business will bring clientele from other towns, and that the paraphernalia being sold is right next to the ice cream shop where people are sending their children to hang out.

Clerk Raymond stated that rather than go through a lot of angst and discussion as a Board, we have the authority to refuse a business where we think that the disadvantages are going to exceed the advantages.

Sally Willard, Town Meeting Member (Precinct 4) – Ms. Willard stated that she is confused by the Board's



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reaction to this company because what they're selling is not illegal.

Jeff DiBona – Mr. DiBona commented that the law states that you can't smoke marijuana publicly (only on private property). It sounds like more of a police issue than a planning issue if someone was smoking in the parking lot. I think that it would be great to fill in that vacant spot and see another small business succeed in the Town Center.

Chris Warren – Ms. Warren stated that the issue here is that it's located next to the only ice cream shop in the Town. This would be welcomed anywhere in Burlington, but perhaps not next to the ice cream shop.

Mr. Murphy stated that, as a parent, I would have a fair amount of comfort in letting my child go down to the storefront without worrying about something nefarious going on. From a business standpoint, we have a vacant spot that doesn't do anybody any good and Mr. Patel doesn't have the ability or the flexibility to go three doors down, for example. As a business owner, you have to take what's available.

MOTION – Member L'Heureux made a motion to close the public hearing on this matter. The motion was seconded by Vice Chairman Gaffney and voted 5-0-0.

MOTION – Member L'Heureux made a motion to approve the request of a Special Permit pursuant to Section 4.2.6.9 "Convenience food stores, drugstores, retail stores for sale of beauty and health aids, smoking supplies, periodicals; none with the sale of food intended for consumption on the premises" of the Zoning Bylaws, to permit the operation of a retail smoke shop by the name of Cambridge Street Smoke Shop, for property located in the Central Business District (CBD) located at 214 Cambridge Street, subject to the terms and conditions contained in exhibit "A" as printed. The motion was seconded by Vice Chairman Gaffney and voted 4-1-0.

MOTION – Member L'Heureux made a motion to withdraw the previous motion. The motion was seconded by Vice Chairman Gaffney and voted 5-0-0.

MOTION – Member L'Heureux made a motion to take items "7.a" and "7.b" together for discussion purposes. The motion was seconded by Vice Chairman Gaffney and voted 5-0-0.

7.a Continued Public Hearing – Petition to amend the Zoning Bylaw, Article III "Districts", Article IV "Use Regulations", and Article VIII "Overlay Districts (8.5.0 Town Center)" to create a new zoning District "Town Center Multifamily (TCM)" – Submitted by Novaya Real Estate Ventures LLC

7.b Continued Public Hearing – Petitions to rezone property to the Town Center Multifamily (TCM) District – 135, 137, 137R, 139A, 139 Cambridge Street – Submitted by Novaya Real Estate Ventures LLC

Peter Carbone of Novaya Real Estate Ventures LLC, and Attorney Mark Vaughn from Riemer & Braunstein appeared before the Board.



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Mr. Vaughn stated that the language in the petition has not changed since the last Board Meeting. Both the Land Use Committee and the Zoning Bylaw Review Committee voted favorably.

Mr. Carbone stated that we may only need at most one waiver. A lot of the waiver language was actually left so that if someone else in the future proposes another property anywhere in the district, you as the Planning Board would have flexibility later on.

Vice Chairman Gaffney stated that he's not opposed to this particular parcel but the way it is written (applying to the entire Town Center), the timing of it, and whether it makes sense now. We have the ability as the Town instead of the applicant to define what is going to be in multi-housing areas. Mr. Vaughn replied to Vice Chairman Gaffney's comments by stating that we're not looking to rezone the entire Town Center, and this is the only property that's being zoned.

Member L'Heureux stated that she'll vote "No" because we're not ready to make this zoning change and we need to look at the entire Town Center and make this decision for all the properties. However, if Town Meeting decides to grant the zoning change, I would be in favor of your property being rezoned.

Shari Ellis, Town Meeting Member (Precinct 3) – Ms. Ellis responded to Mr. Gaffney's comments stating that the warrant says the proposed development will enhance or provide for improved outdoor recreational space for residents and/or other community benefit. The version that the Board has in front of them might be different because I'm reading the version that the Zoning Bylaw Review Committee approved. Mr. Gaffney replied that's not the version in front of me. Ms. Ellis added that the ZBRC did have one minor grammar change but that doesn't change any context of anything.

MOTION – Member L'Heureux made a motion to close the public hearing on this matter. The motion was seconded by Vice Chairman Gaffney and voted 5-0-0.

MOTION – Member L'Heureux made a motion to recommend **favorably** on the Petition to amend the Zoning Bylaw, Article III "Districts", Article IV "Use Regulations", and Article VIII "Overlay Districts (8.5.0 Town Center)" to create a new zoning District "Town Center Multifamily (TCM)". The motion was seconded by Vice Chairman Gaffney and voted 2-3-0.

MOTION – Member L'Heureux made a motion to recommend **favorably** on the petition to amend the zoning bylaw and zoning map to create a new zoning district to be called the Town Center Multifamily (TCM) District, to rezone properties at 135, 137, 137R, 139A, and 139 Cambridge Street into the Town Center Multifamily (TCM) District submitted by Novaya Real Estate Ventures LLC, subject to the developer and the Selectboard entering into a development agreement prior to a vote at town meeting which includes the following provisions as printed. The motion was seconded by Vice Chairman Gaffney and voted 4-1-0.

6. Administrative Matters

Article #32 RE: Adopting the Community Preservation Act in Burlington

Jon Sachs, Chairman of the Committee to pass the Community Preservation Act in Burlington, MA appeared



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before the Board.

Member Impemba left the Meeting at 8:33 PM. Member Impemba stated that he is familiar with the Community Preservation Act and I'm in favor of it.

Mr. Sachs stated that the Act was passed by the State Legislature in 2000 and signed by Governor Cellucci to enable cities and towns across Massachusetts, like Burlington, to create local dedicated funds for open space and recreation, historic preservation, and affordable housing. They collect fees on all real estate transactions into a Trust Fund. Burlington residents and businesses have been paying these fees since 2000, but not getting any return. Communities that join CPA get access to the state funds by placing a small surcharge on local real estate taxes. The average homeowner in Burlington would pay about \$75 per year additional to the average tax of about \$5,000 with exemptions available for low-income persons and moderate-income seniors. The CPA would allow us to assess a surcharge between 1% and 3%. Any community can vote to leave the program, but none has ever done so. We have worked with the Burlington Chamber of Commerce Government Affairs Committee who stated that they "recognize that the CPA could have a beneficial impact to the Town." Many surrounding towns (i.e., Chelmsford, Lexington, and Bedford) that we compete with for businesses are CPA towns and provide amenities that business look for when relocating. So, even if the cost is moderate, why do we need it? Because a town's budget has to cover police, fire, schools, etc., and many valuable projects tend to get squeezed out.

Mr. Sachs then outlined how Burlington will benefit from CPA:

- Open Space projects:
 - ADA Accessible Trails
 - Additional parking at conservation areas
 - Boardwalks through wetlands
- Recreation projects:
 - State-of-the-art playgrounds
 - Outdoor adult fitness equipment
 - Swimming facility
- Historical Preservation projects:
 - Funds to purchase historic homes before they are torn down (i.e., Francis Wyman House)
- Affordable Housing projects:
 - Expand housing for older adults and Veterans who want to remain in Burlington

Mr. Sachs then stated that if the Town Meeting votes to put CPA on the November 2022 ballot and it passes, an official CPA committee will be formed with up to 9 Members (5 are mandated by the CPA law). We are asking the Planning Board to vote to recommend that Town Meeting put CPA on the November ballot for the voters to decide.

Chris Warren – Ms. Warren stated that this is an opportunity I'm in support of.



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MOTION – Member L’Heureux made a motion to recommend **favorably** on the petition to bring the Community Preservation Act (CPA) to the ballot in November. The motion was seconded by Vice Chairman Gaffney and voted 4-0-0.

7.c Continued Public Hearing – Petition to amend the Zoning Bylaw, Article II: Definitions and Article V “Dimensional Requirements” to address Groundwater Separation for One – Dwelling District – Submitted by the Planning Board

Article #40 RE: Amend Zoning Bylaw – Distance from Basement, Slab or Crawl Space and Groundwater

Ms. Kassner stated that we’re continuing to talk with the Conservation Commission about how this Bylaw and the Stormwater Bylaw will work together. This alone is designed to ensure that your basement floor, slab or crawl space is two feet above the groundwater to alleviate the negative effects of water discharge from sump pumps in basements. It will be Article #40 on the Warrant.

Member L’Heureux stated that it’s important for people to understand that the purpose of this is to protect an individual's property from their neighbor’s construction.

Chairman Rappaport stated that we have a lot of great ethical builders, but we have some folks who are new to the game and don’t have the same area of expertise that others have, and not everyone is as ethical as we would like them to be. Otherwise, we wouldn’t be having this conversation.

Shari Ellis, Town Meeting Member (Precinct 3) – Ms. Ellis stated that ZBRC had some real concerns that the conditions were taken out. I would personally see the conditions be put back in and if the Attorney General strikes it down, then we can tweak it again.

Ms. Kassner stated that this was proposed because there is no provision in zoning to require a measurement to be taken where groundwater is. Neighboring communities to Burlington all have some sort of separation by 2-feet. The Lexington Zoning Code is what we modeled this one off of. This Zoning Bylaw is intended to stop and solve a problem before it happens because the enforcement of current Board of Health regulations (which prohibit the discharging of water onto the street or neighboring properties) is complaint driven. The second provision was if you were less than 2-feet, you could have a registered engineer figure out a plan to mitigate it on-site. However, the mechanism we have here was that it had to go through the Building Department to review (not other departments). We want to move this forward and make it a separate stand-alone dimensional requirement.

Susan Kadilak – Ms. Kadilak stated that if they’re not able to mitigate the water on-site, the other alternative is going to be building mounds, which is going to make them higher than a neighboring property and that will encourage water to flow away from that property. Ms. Kassner replied that if less than the 2-feet is causing problems, we recognize that it may cause some property owners to do more mounding. However, if you’re moving that much soil, you’re going to trigger a Stormwater Permit.

Vice Chairman Gaffney asked if the Board of Appeals could override this amendment. Ms. Kassner replied



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yes.

Chris Warren – Ms. Warren asked how many homes in Burlington have sump pumps. Ms. Bonventre replied that we don't have that number, but we can check with the Board of Health.

MOTION – Member L'Heureux made a motion to recommend **favorably** on the petition to see if the Town will vote to amend the Town of Burlington Zoning Bylaw to add a new definition in Article II, for "Groundwater" and dimension provisions in Article V, requiring a 2-foot minimum separation between the basement or slab level of a new or over 1,000 SF addition of a dwelling in the One-Family (RO) Zoning District, submitted by the Planning Board. The motion was seconded by Vice Chairman Gaffney and voted 4-0-0.

9. Minutes

MOTION – Member L'Heureux made a motion to approve the Planning Board minutes of February 17, 2022; March 3, 2022; and March 17, 2022 as amended. The motion was seconded by Vice Chairman Gaffney and voted 4-0-0.

10. Other Matters

10.a Discussion

10.a.i Open Planning Board Seat Process

Chairman Rappaport stated that there is an open Planning Board seat. There is a link to an application on the Planning Board website. After conducting interviews, the candidate that we feel is the right fit will appear before the Select Board for final approval.

10.a.ii Planning Board Budget

Ms. Kassner stated that we're looking for a new Development Coordinator. Any Board Members that can attend the Town Meeting on May 9 for that budget to support the department would be appreciated.

10.a.iii Assistant Planner Posting

Ms. Kassner stated that Assistant Planner position has been posted online.

10.b Correspondence

There was no correspondence.

10.c Reports from Town Counsel

There were no reports from Town Counsel.

10.d Subcommittee Reports

There were no subcommittee reports.



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10.e Unfinished Business

There was no unfinished business.

10.f New Business

There was no new business.

MOTION – Member L’Heureux made a motion to adjourn the April 21, 2022 Planning Board meeting at 9:26 PM. The motion was seconded by Vice Chairman Gaffney and voted 4-0-0.

*Respectfully Submitted by Eric Bergeron,
Recording Clerk*