



TOWN OF BURLINGTON, MA
PLANNING BOARD MINUTES
AUGUST 18, 2022

- Board Members Present:** Chairman Brenda Rappaport; Vice Chairman Barbara G. L’Heureux; Clerk William Gaffney; Ernest E. Covino; Toni Ann Natola; Joseph A. Impemba; and Jessica Sutherland
- Board Members Absent:** None
- 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 7:05 PM. Vice Chairman L’Heureux stated that the Town of Burlington will be holding the August 18, 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 and extended by Chapter 22 of the Acts of 2022, including permitting remote meetings and participation, until March 31, 2023.

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.

MOTION – Vice Chairman L’Heureux made a motion to take items “7.f” through “7.l” together and out of order for discussion purposes. The motion was seconded by Member Covino and voted 6-0-0.

7.f Continued Public Hearing – Application for Approval of a Special Permit pursuant to Section 6.1.2.1 “Nonconforming Structures and Premises” of the Zoning Bylaws – 1 Burlington Mall Road – Pyramid Burlington Management LLC on behalf of RB Hotel Burlington LLC, Applicant

7.g Continued Public Hearing - Application for Approval of a Site Plan – 1 Burlington Mall Road – Pyramid Burlington Management LLC on behalf of RB Hotel Burlington LLC, Applicant

7.h Continued Public Hearing – Application for Approval of a Special Permit pursuant to Section 4.2.7.4.2 “Life Science laboratories engaged in the manufacture of life science technologies and medicines for commercial production to the market including, but not limited to, the fields of pharmaceuticals, biomedical technologies and engineering, life systems technologies, environmental, biomedical devices Biosafety Level 4 (BL-4) laboratories, as defined by the Centers for Disease Control and Prevention, are prohibited in Burlington” of the Zoning Bylaws – 1 Burlington Mall Road – Lincoln Property Company, Applicant



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7.i Continued Public Hearing – Application for Approval of a Special Permit pursuant to Section 4.2.7.9 “Hazardous and toxic materials/chemicals use storage, transport, disposal or discharge” of the Zoning Bylaws – 1 Burlington Mall Road – Lincoln Property Company, Applicant

7.j Continued Public Hearing – Application for Approval of a Special Permit pursuant to Section 4.2.7.12 “Generation or storage of hazardous waste, in excess of the volumes classified as a very small quantity generator (VSQG)” of the Zoning Bylaws – 1 Burlington Mall Road – Lincoln Property Company, Applicant

7.k Continued Public Hearing – Application for Approval of a Special Permit pursuant to Section 4.3.2.15 “Storage and disposal of oils and fuels/ petroleum products” of the Zoning Bylaws – 1 Burlington Mall Road – Lincoln Property Company, Applicant

7.l Continued Public Hearing - Application for Approval of a Site Plan – 1 Burlington Mall Road – Lincoln Property Group, Applicant

MOTION – Vice Chairman L’Heureux made a motion to continue these matters to the Planning Board Meeting of September 15th at the request of the Applicant’s attorney in an email dated August 18, 2022. The motion was seconded by Member Covino and voted 6-0-0.

Clerk Gaffney and Chairman Rappaport asked the staff to contact Lahey anytime they’re looking to go into a Burlington property for overflow parking that they come before the Board as well as to see what their parking plans are for the future. Ms. Kassner agreed to the request.

2. Citizens Time

No citizens came forward.

3. Announcements

Chairman Rappaport introduced Jessica Sutherland as a new Member to the Planning Board.

Ms. Bonventre read the announcements. The Housing Partnership Committee will be having a meeting on August 19 at 11:00 AM via Webex. The Sculpture Park Committee will meet on August 30 at 4:30 PM via Webex. The Zoning Bylaw Review Committee will be held on September 14 at 6:30 PM at the Town Hall Annex and via Zoom. Household Hazardous Waste Collection Day will be held on September 17 from 8:30 AM to 12:00 PM. The last day to register to vote for the State Primary Election is August 27 until 5:00 PM at the Town Clerk’s Office and Grandview Farm. August 29 is the deadline to apply for a mail-in ballot. The early voting period will be August 27 through September 2, and September 6 is Primary Election Day from 7:00 AM to 8:00 PM at the Burlington High School. Labor Day is on September 5 and all town offices will be closed.



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Vice Chairman L'Heureux stated that the Sculpture Park Committee will be hosting an ice cream social on Saturday, August 20 from 10 AM to 12 PM.

Member Covino expressed his condolences to the family of Syamal Chaudhuri and thanked his services to the community.

4. Legal Notices of Interest

There were no legal notices.

5. Non-Approvals

There were no non-approvals.

6. Administrative Matters

There were no administrative matters.

7. Matters of Appointment

MOTION – Vice Chairman L'Heureux made a motion to take item “7.e” out of order for discussion purposes. The motion was seconded by Clerk Gaffney and voted 6-0-0.

7.e Public Hearing – Application for Approval of a Special Permit pursuant to Section 6.1.3 “Nonconforming Single and Two Family Residential Structures” of the Zoning Bylaws – 6 Olean Road – Jeff Grant, Applicant

Jeff Grant, of 6 Olean Road, appeared for the application.

Mr. Grant stated that the property previously had a garage, but it sustained fire damage and had to be torn down. They are looking to build a new garage on the existing footprint and extending the footprint into the yard. They want to have a garage for vehicles, storage as well as a home office for the applicant's wife since she works remotely.

Chairman Rappaport asked if all neighbors were notified. Ms. Bonventre replied that our office received no complaints from any of the abutting neighbors.

Clerk Gaffney asked the applicant if there is going to be any plumbing in the garage. Mr. Grant replied yes and that the plan is to have a wet sink and potentially a toilet.

Vice Chairman L'Heureux asked what the dimensions of the office are. Mr. Grant replied 12 x 22 square feet. Vice Chairman L'Heureux then asked if the entire new structure will be two stories. Mr. Grant replied no, only over the garage section. The office space will realistically be for storage purposes because there's



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not much room up there.

Member Covino commented that the building inspector wouldn't grant a permit if it appeared that there was a second dwelling and that doesn't appear to be the case here.

Member Impemba arrived at 7:30 PM.

MOTION – Member Covino made a motion to close the public hearing on this matter. The motion was seconded by Vice Chairman L'Heureux and voted 7-0-0.

MOTION – Vice Chairman L'Heureux made a motion Pursuant to Section 6.1.3 “Nonconforming Single and Two-Family Residential Structure” of the Zoning Bylaw, the Planning Board finds that the extension, alteration and change of the nonconforming detached residential garage at 6 Olean Road will not be substantially more detrimental to the neighborhood than the previously existing nonconforming detached garage as contained in exhibit “A” as amended. The motion was seconded by Member Covino and voted 7-0-0.

7.a 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

Ms. Bonventre stated that the Board was concerned about groundwater being displaced and then ending up becoming surface water and flooding other areas of town:

- We have defined groundwater as “the estimated highest level to a zone of saturation in the soil in most years under a normal wet season, as determined by a Licensed Soil Evaluator.”
 - Different colors and striations in the soil will indicate to an evaluator that this is estimated seasonal high ground water. When digging for a slab or foundation, it will become apparent.
- The purpose of this bylaw is to preserve and protect groundwater; and to establish procedures to control the adverse effects of building basement floors below the (ESHGWT), including basement flooding, pumping and discharge of groundwater to neighboring properties, discharging groundwater to the public way, and illicit connections to the Town sewer and stormwater connections.
- This will apply to all new building construction including single family dwellings (all zoning districts) or anything that's increasing an impervious footprint by 750 square feet on the lot.
 - The previous 2' separation was a carryover from septic systems and does not apply here.
- If you're going to build lower than seasonal ground water, you need to have **(a)** detailed engineering plans from a licensed Professional Civil Engineer, **(b)** certification from the engineer that all groundwater discharge will be mitigated onsite, and **(c)** groundwater mitigation cannot be connected to the municipal stormwater system. Mass General Law, Chapter 44, Section 53G gives the Town the ability to do a peer review (requested at the expense of the applicant), if the Town has questions



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regarding the information provided from the applicant outside our expertise.

Member Covino asked how the mitigation would work. Ms. Kassner replied that an engineered system is needed to ensure that the pre and post drainage water flow is not any different for the neighborhood around you.

Vice Chairman L'Heureux asked who would be responsible for making the decision regarding striations in the soil. Ms. Kassner replied that you would need to have a Licensed Soil Evaluator. Vice Chairman L'Heureux then asked is there a world in which we could just say you cannot build if it's in the seasonal groundwater. Ms. Kassner replied that when we had the previous iteration where it was two (2) feet and then you had to get a variance for less than two (2) feet, everyone was concerned that the Board of Appeals wasn't the place to have a conversation about the engineering of the lot to make sure it's not affecting your properties. If you're above it, good, but if you're not above it, you need to meet these criteria.

Ms. Kassner clarified that you need to be above the estimated seasonal high ground water table not you have to dig down 30 feet to find it to make sure that you are, rather you need to dig down enough to make sure there's at least a separation between your basement, your slab, or your crawl space. This is a big step forward in getting the information that we need to know when properties are being built, and to then have that conversation so we can put things in place to not affect our neighbors.

Susan Kadilak – Ms. Kadilak commented that once you excavate a hole for a foundation, the building inspector has to come and inspect that site and they'll see the dirt, so even if, for whatever reason, someone doesn't see it, they will see it and a lot of times you can't miss it because the water is flowing, and you have to pump it.

Shari Ellis – Ms. Ellis stated that the way she reads this bylaw is that you can do it if you're above the ESHGWT, and if you're below it, then you have to do (a), (b), and (c) (*see above*). To me, if you can't do (a), (b), and (c), then you can't do it at all, but is that really legally correct? This would be a good question for Town Counsel.

Ms. Kassner noted that this would be triggered for all tear downs as well as additions of more than 750 square feet. If there was a 250 square foot addition to an existing house it might not be triggered.

MOTION – Vice Chairman L'Heureux made a motion to close the public hearing on this matter. The motion was seconded by Clerk Gaffney and voted 7-0-0.

MOTION – Vice Chairman L'Heureux made a motion to recommend **favorably** on Article 16, 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 dimensional provisions in Article V, requiring all new building construction, including single family dwellings; or additions to existing buildings or dwellings and/or separate buildings or dwellings that increases building/dwelling footprint by more than 750 square feet on



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the lot within all zoning districts, submitted by the Planning Board. The motion was seconded by Member Covino and voted 7-0-0.

7.b Public Hearing – Petition to amend the Zoning Bylaw, Article II “Definitions” and Article IV “Use Regulations” to address and define uses pertaining to Smoke Shops – Submitted by Planning Board

Ms. Bonventre stated that we’re bringing this before the Town Meeting based on the discussion we had with the applicant who was seeking to put the smoke shop in the Town Center. For this article, we are not banning all tobacco products from the Town of Burlington and it’s not stopping any convenience store or supermarket from selling any tobacco-related products. It simply requires all establishments whose main sales are tobacco products to only be allowed by Special Permit in the BT zoning district. In doing that, we had to define “smoke shop”:

- An establishment whose principal use is dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia, electronic tobacco.

This does not regulate registered marijuana dispensers. This also does not affect existing establishments that have already gotten Special Permits, so this is for new businesses coming into Town.

Vice Chairman L’Heureux stated that it seemed to be a contentious issue when this came before us, so it seems like a good idea to ask Town Meeting if they want smoke shops allowed or if they only want them available through Special Permit.

Ms. Sutherland asked how are you defining sales. Ms. Bonventre replied that it will be a common definition so I think it would be money transactions. Ms. Sutherland then asked would it be defined as “smoke shop” because the actual sales dollars are much higher than the other products. Ms. Bonventre replied that the Building Department is the one that will interpret our bylaw and they will enforce our bylaw.

Shari Ellis – Ms. Ellis stated that a map would be helpful for Town Meeting.

MOTION – Vice Chairman L’Heureux made a motion to close the public hearing on this matter. The motion was seconded by Member Covino and voted 7-0-0.

MOTION – Vice Chairman L’Heureux made a motion to recommend **favorably** on Article 15, the petition to create a new definition of “Smoke Shop” under Article II: Definitions and Article IV: Principal Use Regulation Schedule to permit Smoke Shops as a principal use in the Continuous Traffic Business (BT) zoning district. The motion was seconded by Member Covino and voted 7-0-0.

MOTION – Vice Chairman L’Heureux made a motion to take items “7.c” and “7.d” together for discussion purposes. The motion was seconded by Member Covino and voted 7-0-0.



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7.c 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 the Planning Board

7.d Public Hearing – Petitions to rezone property to the Town Center Multifamily (TCM) District – 137, 137 R, 138, 139, 139A, 169, 171, 173-175, 185, 207, 209, 211, 276 Cambridge Street; 25, 26, 30, 36 Grant Avenue; 1 Kinney Avenue; 17, 18, 20, 21, 22, 24 Terry Avenue – Submitted by the Planning Board

Ms. Bonventre stated that these Petitions will not be going forward at September Town Meeting. This is a response to May Town Meeting and to begin discussions regarding the MBTA Communities requirements. If we don't comply with the MBTA requirements, we will lose a lot of grant funding from the state for major infrastructure projects. Since 2008, Burlington has received over \$7 million in MassWorks Funding and \$175,000 in Housing Choice and other Economic Development Programs. In order to meet the MBTA requirements, you need to allow multi-family housing by right. Multifamily housing in the TCM Overlay District must be a minimum of 15 units per acre of upland lot area. All uses permitted by right or by Special Permit in the CBD are permitted by right or by Special Permit in the TCM District.

Ms. Kassner stated that the regulations just came out last week and so we're still very much digesting them as all the other communities in Massachusetts are. From what I've read so far, the regulations are doing a better job of recognizing infrastructure limitations and more uniqueness of location.

Clerk Gaffney asked if we are going to be able to notify all the abutters in the Town Center. Ms. Kassner replied yes.

MOTION – Vice Chairman L'Heureux made a motion to continue these matters to the Planning Board Meeting of September 15, 2022. The motion was seconded by Member Covino and voted 7-0-0.

7.m Public Hearing – Petition to amend the Rules and Regulations Governing the Subdivision of Land in Burlington – Submitted by the Planning Board

Ms. Bonventre stated that we wanted to tighten up some language regarding groundwater and stormwater for consistency as well as define “frontage” more clearly.

Ms. Kassner stated that Section 11 of the Subdivision Rules and Regulations have waiver criteria for subdivisions. There is a reason to take some of the language from both the general bylaw and zoning bylaw for groundwater and stormwater, especially regarding the negative effects that can happen if it's not properly figured out. We want to make sure that we include that language in future subdivision developments, so we have more control and oversight as we look at lot plotting and configurations.



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MOTION – Vice Chairman L’Heureux made a motion to continue these matters to the Planning Board Meeting of October 6, 2022. The motion was seconded by Member Covino and voted 7-0-0.

7.n Public Hearing – Petition to amend the Planning Board Town Center Design Rules and Regulations – Submitted by the Planning Board

Ms. Bonventre stated that the ZBRC Signage subcommittee is working on signage language in the Town Center. They did not submit anything for Town Meeting this time, but they’re working on it for January.

MOTION – Vice Chairman L’Heureux made a motion to continue these matters to the Planning Board Meeting of October 6, 2022. The motion was seconded by Member Covino and voted 7-0-0.

9. Minutes

No minutes to approve.

10. Other Matters

10.a Discussion

Planning Board retreat scheduled for September 29, 2022, at 5:30 PM.

10b. Correspondence

There was no correspondence.

10c. Reports from Town Counsel

There were no reports from Town Counsel.

10d. Subcommittee Reports

10.d.i Housing Partnership

Ms. Bonventre stated that we have finished the Housing Needs Assessment with MAPC. There will be a presentation at Town Meeting.

10.d.ii Recreation Commission

Clerk Gaffney stated that there’s a proposal for the reconfiguration of the Disc Golf Course at Simonds Park. There might be some additional signage directing people to certain holes.

10.d.iii Transportation Committee

Free Transportation Day on September 29, 2022.



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10.e Unfinished Business

There was no unfinished business.

10.f New Business

There was no new business.

MOTION – Vice Chairman L’Heureux made a motion to adjourn the August 18, 2022 Planning Board meeting at 8:49 PM. The motion was seconded by Clerk Gaffney and voted 7-0-0.

*Respectfully Submitted by Eric Bergeron,
Recording Clerk*