



## Chelmsford Planning Board

Town of Chelmsford  
50 Billerica Road  
Chelmsford, MA 01824

Town Clerk Stamp



### **MEETING MINUTES**

**March 8, 2023**

*(approved March 22, 2023)*

TIME: 7:00 p.m.

LOCATION: Town Offices

ROOM: 204

**Members Present:** Michael Raisbeck, Chair  
Deirdre Connolly, Vice Chair  
Nancy Araway, Clerk  
Michael Walsh  
Paul McDougall

**Members Present via Zoom:** Tim Shanahan  
Annita Tanini  
Erica Clifford (Alternate member)

**Others Present:** Evan Belansky, Community Development Director  
Paul Haverty, Town Counsel

Chairman Raisbeck called the public meeting to order at approximately 7:00 p.m.

#### **PUBLIC INPUT**

Ruth Luna of 10 Carter Drive – Expressed concern regarding open meeting law and whether the Board will address her request to give the public an apology as a result of the previously discussed work sessions the Board participated in with an applicant.

Town Counsel stated that the Board should not address or answer public input comments, otherwise it might be in another violation of open meeting laws.

#### **PUBLIC HEARINGS – CONTINUED:**

1. **300 Apollo Drive** – THE DAVIS COMPANIES requesting modifications to previously approved site plan and special permits (approved on August 27, 1986 and most recently revised October 19, 1998) to alter the existing fire access lane by widening it to a two (2) lane private access drive with access control gates and combine it with a newly created buildable lot. In doing so, the Applicant is requesting a special permit per Section 195-18 for a reduced parking ratio to a minimum of 3.5

spaces per 1,000 square feet of net floor area and any other permit relief as may be required under the Chelmsford Zoning Bylaw to allow the proposed use/project. The site is located in the IA zoning district and is shown as parcel ID Map 75, Block 291, Lot 1 and consists of approximately 26.65 acres.

**\*\*\* REQUEST TO WITHDRAW WITHOUT PREJUDICE \*\*\***

Mike Cantalupa addressed the Board to formally request a withdrawal without prejudice for both the 300 Apollo Drive access road proposal and the Riverneck Road warehouse proposal. The request to withdraw is due to not having enough time to address all of the outstanding issues in the past two weeks to satisfy everyone's concerns with quality for a determination tonight. Also, given the upcoming election he believes it is best to return to a Board with a new modified plan. He and his team have heard everyone's concerns. They are reconsidering a less intense property use as a result of everyone's feedback that the proposed use and building size are not acceptable, and from the negative feedback resulting from the Apollo Drive access road proposal.

Chair Raisbeck stated that "withdrawal without prejudice" means that the applicant can return to the Board with a new application for this property without waiting for a certain amount of time to pass before returning.

**Motion:** by Araway to ACCEPT withdrawal of 300 Apollo Drive, without prejudice.  
Seconded by Connolly. **Motion carries, unanimously, 7-0.**  
(Roll call on Zoom: Shanahan and Tanini)

2. **191, 195, 199-201 Riverneck Road** – The Davis Companies on behalf of DIV Riverneck, LLC – for the demolition of the existing structures and construction of a new 247,860 +/- square feet industrial warehouse building with integrated surface parking, loading facilities and on-site infrastructure improvements. The site is in the IA and RB zoning districts and is shown as parcel Id Map 64, Block 275, Lots 4, 5, 7 and 16 and consisting of approximately 21.03 acres. The applicant requests approval under Article XXIV, Route 129 Business Amenities Overlay District (BAOD) and Article XXI, Community Enhancement and Investment Overlay District (CEIOD) sub-sections 195-111 D, 195-115, 195-116, and associated Special Permits per Article XIV Aquifer Protection District, sub-section 195-74, Article XV Floodplain District, sub-section 195-82, Article XI Major Business Complexes, and any other permit relief, including but not limited to Articles V and IX, as may be required under the Chelmsford Zoning Bylaw to allow the proposed use/project.

**\*\*\* REQUEST TO WITHDRAW WITHOUT PREJUDICE \*\*\***

**Motion:** by Araway to ACCEPT withdrawal of 191, 195, 199-201 Riverneck Road, without prejudice. Seconded by Shanahan. **Motion carries, unanimously, 7-0.**  
(Roll call on Zoom: Shanahan and Clifford)

## ADMINISTRATIVE REVIEW – NEW

1. **61 Dunstable Road (*new address 65 Dunstable Road*) – Request for two-year extension on previously approved Special Permit for construction a new two-family dwelling.**

Owner/applicant Chris Sullivan informed the Board that he has not started his project. The lot remains raw land (which was created via property subdivision and approved via a CEIOD special permit in July 2021).

**Motion:** by Ms. Araway to GRANT a two-year permit extension to 61 Dunstable Road. Seconded by Mr. Shanahan. **Motion carries, unanimously, 7-0.**  
(Roll call on Zoom: Shanahan and Tanini)

## ADMINISTRATIVE REVIEW - CONTINUED

1. **12 Kidder Road – review of December 9, 2020 Minor Modification related to landscape buffering**

Chair Raisbeck recused himself due to business relationships with one of the parties involved. Vice-Chair Connolly led the public meeting and stated that she has the disadvantage of not being on the Board at the approval process. She did some research to understand this permit and the project in preparation for this meeting.

Attorney Doug Hausler represented the Hider family who are direct abutters. They are requesting that the Board clarify the vote taken to grant the minor modification in December 2020, which modified a Certificate of Decision granted in 2016. When Attorney Peter Nicosia (representing the applicant/builder) submitted the minor modification request letter to the Board, he only mentioned the de minimis change for a temporary fence. The Board voted to grant the minor modification, allowing the fence to be moved slightly from the permanent location. However, the letter did not address, in any form, the pre-construction special condition that mandated a landscape buffer to be planted before construction commenced to obstruct construction dust. Work has begun onsite without the planting of the trees which has resulted in a lot of dust. The language in the decision is not vague, yet the modification request did not make any mention of commencing work without the plantings. Therefore, Atty. Hausler requests that the Board make clarifying remarks, or vote that the intention of the modification granted was only for the fence and it did not include omission of the mandated plantings per the original special condition, and also issue a stop work order conditional upon the applicant completing the pre-construction special condition(s).

Atty. Nicosia stated that when he submitted the modification request, he also submitted a plan depicting the modification which was only for the location of a temporary fence. Currently, there is litigation between parties regarding the property boundary and the location of the permanent fence and plantings. There is an injunction with the case which prevents any work or disturbance in the area to take place within the boundary in question, until the dispute is resolved by the land-court judge. The purpose of the modification was to install a temporary fence away from the boundary area, in order to begin work. Temporary plantings are not as easy to relocate due to the root balls establishing themselves. The land right case is finally set for trial on June 8, 2023. Once

that is resolved and a decision is granted, his client can install the permanent fence and shrubs. Given we are in the middle of winter, the applicant cannot install plantings at this time. Atty. Nicosia stated that the omission of the shrubs has not been a function of his client not wanting to comply, but rather an issue of timing and of being able to comply.

Atty. Hausler disagreed and argued that the Decision document is clear and mandatory in Condition 7: "Prior to commencement of further land disturbance or construction, the fence and landscaping along the property line... shall be installed." The Decision still stands even if the case is in land court. They (the applicant) are guilty of intentional omission.

Atty. Nicosia rebutted stating that neither Atty. Hausler nor his clients spoke up in any opposition during the modification hearing, and the modification plan submitted was peer reviewed.

Town Counsel had Atty. Nicosia clarify that there are two rows of shrubs mandated for planting. One row of shrubs is to be planted in the disputed area that has an injunction on it. The second row is outside of the disputed area.

Chair Connolly expressed concern that the purpose of the shrubs was to mitigate for the dust caused by the earth moving. To place the shrubs in after the fact, negates the mitigation. But Ms. Connolly and Araway both expressed that at least one row of shrubs can be placed now within the undisputed area.

Town Counsel clarified that the first row of shrubs could not be installed due to the injunction. However, there was no reason not to install the second row of shrubs.

Mr. Walsh stated that he was present during the modification meeting and that he does recall any intention to omit the shrubs.

Chair Connolly confirmed that the site work commenced over three months ago. The ground was not frozen to prevent the plantings from occurring.

The Board does not have authority to issue a cease and desist. However, once a clarification is made Building Inspector can use that to issue a cease and desist until the shrubs are planted, as intended and mandated by the Certificate of Decision.

**Motion:** by Ms. Araway provide clarification of the previous finding that the Board only approved a modification providing relief only to the fence to be located in the disputed area. It did not intend to, nor produce, a modification of the site plan approval beyond the area of the fence. The modification did not approve omission of the shrubs that were required prior to commencement of work. Chair Connolly amended the motion to state that the remaining aspects of the Certificate of Decision that lie outside of the injunction area shall be enforced. Seconded by Mr. Shanahan. **Motion carries, 6-0.**  
(Roll call on Zoom: Shanahan and Tanini)

**(Chair Raisbeck returned for the remainder of the meeting)**

CONTINUED PUBLIC HEARING:

3. **264 Groton Road** - Attorney Douglas C. Deschenes requesting a Definitive Subdivision approval for Newport Landing subdivision proposal consisting of a two-lot private way with a two-family dwelling in each lot (total of four new residential units). This property is located in the RC zoning district and is shown as Parcel ID Map 23, Block 92, Lot 8 and consists of approximately 1.81 acres.

**\*\*\* REQUEST FOR CONTINUATION WITHOUT DISCUSSION \*\*\***

**Motion:** by Ms. Araway to CONTINUE the public hearing to March 22, 2023.  
Seconded by Ms Connolly. **Motion carries, unanimously, 7-0.**  
(Roll call on Zoom: Shanahan and Tanini)

4. **250 Apollo Drive** – 250 Apollo Drive LLC – for the construction of a 36,372 sq. ft. building addition for manufacturing and 14,100 sq. ft. office space with integrated surface parking, loading facilities and on-site infrastructure improvements. The site is located in the IA zoning district and is shown as Parcel ID: Map 75, Block 291, Lot 36 and consisting of approximately 10.99 acres. The applicant requests approval under Article XXI, **Community Enhancement and Investment Overlay District (CEIOD)** sub-sections 195-111.D (2), 195-115, Special Permits per Article XIV Aquifer Protection District, sub-section 195-74, Article XI Major Business Complexes, and any other permit relief.

Jim Hanley, of Civil Design Consultants, gave an update on the proposal. Since January 11<sup>th</sup> when the hearing opened, he has revised the plans in response to the departmental comments received. Revisions to plans were minor and detail oriented. They have eliminated the onsite septic system, and are in discussions with DPW to tie into the onsite sewer main with associated fees; the details still need to be finalized. They have also addressed onsite turning points with Fire Prevention. He has met with the Conservation Commission twice for the Request for Determination (RDA) process, which was voted negative. Therefore, a Notice of Intent (NOI) is not required.

Tonight they are asking the Board for project approval.

Ms. Araway read additional departmental letters received in February into the record. Mr. Hanley has responded to all of the water district and town engineer concerns, and are working out some final details. The Building Department and Fire Prevention comments are standard requirements for obtaining building permits.

Public Comment:

Armen Jeknavorian, Jr. of 5 Bailey Terrace is in favor of the project. He thinks this is a great proposal; robotics-based, great building size, low number of loading docks, etc. He does not want to jeopardize this project. However, he needs to bring something to the Board's attention for clarification purposes. He recently emailed the Board regarding a finding he made when researching the 300 Apollo Drive access road. Mr. Tambone originally owned the seven lots with buildings. The initial previous special permit for this property had a special condition for a traffic officer at the Apollo Drive & Rt. 129 intersection. In 1987, the special permit was issued for

250 Apollo. An extension of special permit was issued a couple of years later because it wasn't built. However, there was a traffic issue at that time and traffic restrictions were required on the special permit extension. He asked the Board whether they are still required with this new proposal? Does a traffic study need to be conducted? A lot of the initial 3-phased build out did not occur so he is unclear as to where this stands. The Board believes the traffic data is addressed in the Master Plan.

Ruth Luna of 10 Carter Drive – Would like to make sure that the water district has received confirmation from the applicant addressing the district's concerns and requests. Is requesting that the Board have a final letter from the water district to confirm there are no outstanding issues.

The Board prefers to receive "clean" letters without concerns from all departments prior to approving a project. That way all concerns have been addressed and confirmed.

Mr. Belansky stated that he has been involved with the DPW and Water District to confirm that Mr. Haley has addressed all departmental concerns so the Board can vote to approve the proposal tonight. He will provide the Board with their final letters at the next meeting during the Board's ratification process of the decision document.

**Motion:** by Ms. Araway to CLOSE the public hearing for 250 Apollo Drive.  
Seconded by Mr. McDougall. **Motion carries, 6-1. Tanini voted in opposition.**  
(Roll call on Zoom: Shanahan and Tanini)

**Motion:** by Ms. Araway to GRANT comprehensive special permit under CEIOD for an addition and reduced parking to 250 Apollo Drive as discussed and presented in the final revised plans with conditions outlined in departmental letters, and subject to receiving clean letters from DPW and the Water District. Seconded by Ms. Connolly.

**Motion carries, 6-1, Tanini voted in opposition.**  
(Roll call on Zoom: Shanahan and Tanini)

#### MEETING MINUTES TO APPROVE – December 14, 2022 and February 22, 2023.

**Motion:** by Ms. Araway to APPROVE meeting minutes for December 14, 2022.  
Seconded by Mr. McDougall. **Motion carries, unanimously, 7-0.**  
(Roll call on Zoom: Shanahan and Tanini)

**Motion:** by Ms. Araway to APPROVE meeting minutes for February 22, 2023.  
Seconded by Mr. McDougall. **Motion carries, unanimously, 7-0.**  
(Roll call on Zoom: Shanahan and Tanini)

#### NEW BUSINESS

Ms. Connolly proposes scheduling a work session soon after the election next month to give everyone an overview of Board procedures and how to communicate with each other, applicants, proponents, residents, town officials, etc. Members agreed to have this discussion during the 4/12/23 public meeting.

NEXT MEETING DATES(S): March 22 & April 12

ADJOURN

**Motion:** by Mr. McDougall to ADJOURN at approximately 8:35 p.m.  
**Motion carries, 7-0.**

*Meeting minutes respectfully submitted by Becky DaSilva-Conde, Departmental Assistant, Community Development Office.*