



Chelmsford Planning Board

Town of Chelmsford
50 Billerica Road
Chelmsford, MA 01824

Town Clerk Stamp



MEETING MINUTES **June 22, 2022**

TIME: 7:00 p.m.

LOCATION: Town Offices, 50 Billerica Road

ROOM: 204

Members Present: Michael Raisbeck, Chair
Deirdre Connolly, Vice Chair
Nancy Araway, Clerk
Michael Walsh
Tim Shanahan
Annita Tanini
Paul McDougall

Members Not Present: Erica Clifford (Alternate member)

Others Present: Evan Belansky, Community Development Director

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

PUBLIC INPUT

No one from the audience, nor Zoom, spoke.

NEW BUSINESS

Master Plan Implementation Committee: Appointment of the resident at-large position

Two residents are interested in volunteering for this position:

- 1) Brian Stripp – 90 High Street. Has been a resident in Chelmsford for 52 years. Has worked and owned a business in Town and has volunteered on the Historical Commission for 7 years.
- 2) Glenn Thoren – 18 Pinewood Road. Has been in Town since 1980. Serves as Town Meeting Representative since 1989, two Charter Review Committees, the 9 North Road Committee, a member of the Storm Water Committee, and several other volunteer activities in Town.

The Board decided to appoint both residents who are willing and capable of serving on the committee.

Motion: by Mr. Shanahan to APPOINT both candidates for the Resident At-large position to the Master Plan Implementation Committee. Seconded by Ms. Araway. **Motion carries, unanimously, 7-0.**

ADMINISTRATIVE REVIEW

1) 250 Apollo Drive – CEIOD applicability

Alan Coleman, partner of CKM Real Estate, owners of the property. They purchased the property about four years ago. Mr. Coleman described their proposal for a high bay addition that will cater to scientific uses, such as electronics and robotics, and other uses that need new and clean customized space.

Matthew Juros, founder and principal of Fishbrook Design Studios, architects in Haverhill, MA. Described the proposed addition to the building. The project consists of a 34,000 sq.ft. high-bay light industrial manufacturing addition that will be attached to the existing building.

Jim Hanley, civil engineer at Civil Design Consultants, Inc., spoke to the specifics of the proposed project, and the permitting and approval process. This site is approximately 11 acres in size; consisting of 464 ft. on of frontage on Apollo Drive, and 267 ft. of frontage on Progress Avenue which is essentially the cul-de-sac. The project will consist of the demolition of an existing parking area and construction of a new attached addition to the existing building.

Board Discussion:

Mr. Walsh asked the applicant whether the addition will support the existing office building or become a separate business entity. Mr. Juros answered that it may support the existing building or be completely separate, it depends on the future tenant(s). The redevelopment intention is to be separate. Mr. Coleman stated that ideally, they could find a tenant that support the office business operations currently at 250 Apollo Drive, but the market will determine that. Currently the office building is 70% occupied.

Ms. Connolly asked if the reduced parking will be for the entire property or only the new addition. The reduced parking of about 100 spaces will be for the entire site. The applicant stated that even at full capacity during pre-pandemic operations, the parking was never full of employees.

Mr. Shanahan asked whether the new addition tenants will utilize Apollo Drive entrance or Progress Ave. Mr. Hanley stated it will likely be Apollo Drive.

Mr. Walsh asked how many loading dock bays will there be in total. Mr. Hanley responded that there are currently two loading bays, and they are proposing to add one more: three total for the property.

Ms. Araway commented that the applicant needs to be aware of potential tenant applications for building use. Light manufacturing is permitted for this property, but heavy manufacturing is not. The substantial difference is the presence of large volumes of highly flammable, toxic, and explosive materials in the facility.

Motion: by Mr. Shanahan to ENDORSE CEIOD applicability to 250 Apollo Drive.
Seconded by Ms. Araway. **Motion carries, unanimously, 7-0.**

2) Off Billerica Road – Map 98, Block 271, Lot 1 – CEIOD applicability (continued)

***** WRITTEN REQUEST TO CONTINUE – NO TESTIMONY *****

Motion: by Mr. Shanahan to continue the Public Hearing to July 13th. Seconded by Ms. Tanini.
Motion carries, unanimously, 7-0.

CONTINUED PUBLIC HEARING

1) **The Davis Companies on behalf of DIV Riverneck, LLC, for properties located at 191, 195, 199-201 Riverneck Road** for the demolition of the existing structures and construction of a 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.

***** WRITTEN REQUEST TO CONTINUE TO JULY 13th – NO TESTIMONY**

As stated at the previous meeting, the applicant submitted a written request to extend the public hearing process through the end of July.

Applicant’s attorney, Christine Hung, is available by phone tonight to speak to the Board, if needed.

Motion: by Mr. Shanahan to continue the Public Hearing to July 13th. Seconded by Ms. Araway.
Motion carries, unanimously, 7-0.

NEW PUBLIC HEARING(S):

1) **150-152 Dalton Road – Luke Fougere** – for the construction of a 40 ft. x 60 ft. detached garage that exceeds 900 sq. ft and requires a special permit per Section 195-11. The site is located in the RB Zoning District and consists of approximately 1.16 acres (Parcel ID: Map 51, Block 131, Lot 82).

David Lavine, the project applicant/contractor, and property owner Luke Fougere were present to discuss their proposal. They are proposing to remove a dilapidated structure and replace it with a new bigger structure.

Chair Raisbeck asked what the use of the new structure will be and whether it is consistent with RB Zoning District. Mr. Fougere stated that he has three registered businesses for this property, one of

which is his landscaping company. The businesses are preexisting since Mr. Fougere purchased the property approximately three and a half years ago.

Ms. Araway asked Mr. Belansky if this property was formerly issued a variance for business use within a residential district. Mr. Belansky stated that it is not clear to him whether there is a special permit for home occupation issued in the past. Mr. Belansky suggested that the Board attempt to get more information from the applicant. There are by-right home occupations and there are home occupations that require a special permit. If the Board chooses not to, this case is similar to any other Planning Board decision. This proposal is considered an expansion of a business. If the applicant exceeds the special permit requirements and they do not have such special permit for a home occupation, then they are in violation of the zoning bylaws. What is before the Board is a request for a detached accessory structure over 900 sq.ft. that requires a special permit from this Board. The special use permit/variance for the business use would be issued by the Zoning Board of Appeals (ZBA).

Mr. Belansky also stated that he spoke with the applicant/contractor regarding the zoning concern after receiving the application packet for tonight's hearing. There wasn't any dialogue afterwards, but he believes the applicant and owner are aware of the zoning special permit concerns.

Mr. Belansky's suggestion to the Board is to focus on the special permit of the accessory structure. If granted, the Board can place special conditions within the permit that specifically states that this permit does not grant permission for the home occupation. Sorting out whether or not this home occupation has been given a special permit, or whether it is grandfathered in will require review of the property's history. A property analysis needs to take place to sort this out; how long has the business existed, what is conducted legally, what is the history/use of the property, etc. It is not clear to Mr. Belansky whether the existing businesses comply with the by-right home business provisions or whether they require a special permit through the ZBA, nor is it clear to what extent the owner intends to use this accessory structure.

Chair Raisbeck asked the owner what is the total square footage of the dilapidated buildings that are proposed to be demolished and replaced with the new structure. Mr. Fougere believes it is approximately 1,391 sq. ft. The new structure will be 2,400 sq. ft. Therefore, it is an expansion. The property consists of 1.66 acres.

Mr. Lavine stated that the property has been used as a landscaping company for some time now, even prior to the current owner. Mr. Fougere stated that before receiving the commercial mortgage for this mixed-use property, he did go through the approval process of registering all his business appropriately. He is incorporated, LLC-ed, and got permitted through the Building Commissioner, and were approved. Therefore, Mr. Fougere believes he is operating by-right and that the prior landscaping businesses did as well. He is not proposing to change any use. He wants to become more efficient and improve the property aesthetically too.

Ms. Tanini asked Mr. Fougere to explain his three businesses. He answered that 1) Dalton LLC is the business entity he created to acquire the property, it is a sole-proprietor, 2) Fougere Landscaping, Inc. is the landscaping business created 15+ years ago, and 3) Fougere Landscaping Supply is a much smaller company used to get his wholesale supply accounts.

Mr. Shanahan asked the owner if he plans to utilize the property's storefront to sell supplies. Mr. Fougere responded that he is permitted/registered to do so, but honestly is not planning to retail out of that space. He fixed up the building to look better aesthetically for the neighborhood. They are using the greenhouse to grow vegetables for personal family use, and the woodshed in the front of the house is set up for his children (he uses his own personal account for that). The new structure will not change or expand the business. It will make the business more efficient with a new building that contains all of his equipment. Mr. Fougere shared that his neighbor spoke with him and was concerned that this could potentially increase truck use and daily loading use. Mr. Fougere stated that is not what he wants to do. He intends to keep the same us, and this family lives on the premises. He wants to make the property look good and be efficient for his family-run business. There will be no change in daily business operations.

Ms. Connolly asked if the owner were to start selling retail, would that change the business use? Chair Raisbeck stated he is unsure but that is not in this Board's purview, that would be a permitting question for the ZBA. The request for this special permit hearing is only for the new structure.

Ms. Connolly asked Mr. Fougere if he has spoken to his neighbors. He stated that he has sent out forty (40) letters to his neighbors, with diagrams of what the new garage will look like. He physically spoke with a few neighbors, and only heard back from a couple of neighbors who had follow-up questions. He has received positive feedback and support.

The new garage building will be insulated, so as not to resonate sound into the neighborhood.

Ms. Araway read departmental review letters into the record. Anthony Reppucci from DPW wrote that roof drain dry walls should be considered for the new structure, and he stated that connection of the building to the town sewer system is not approved. Both the Board of Health and Center Water District had no comments.

Ms. Connolly asked whether there is currently a sewer connection to the existing accessory structures. Mr. Lavine stated that there is not but may possibly be in the future. The project will also be reviewed by the Fire Department as part of the building permit process.

Mr. Fougere stated that he is not planning to install roof dry wells, because he is not installing impervious surfaces. His business is drain certified should that become a requirement they can easily do so. However, the new garage will have a gutter system. Right now, the driveway is recycled asphalt and is pervious. He is not planning to pave the driveway. In fact, he plans to remove the asphalt around an old basketball hoop along the current dilapidated structures.

Public Comment:

Attorney Henry Dayne representative for Larry Thatcher, 77 Linwood Street, who is a direct abutter. Atty. Dayne handed out a packet to each of the Board members for review. The abutter is opposed to this project because it is an application for a large commercial structure within a low-density single-family residential area. Atty. Dayne believes there are a few issues to consider: 1) The application packet is incomplete because it does not include information regarding all of the factors required under this special permit for review and decision by the Board (economic impacts, traffic flow and safety, neighborhood character, etc.); and 2) Whether the commercial use of the site and proposed structure are in compliance with the zoning bylaw? Atty. Dayne argues it is hard to categorize the current business as a home-

occupation because the property is owned by an LLC, the current business activities are conducted under a corporation, and the property was purchased via a commercial loan versus a conventional residential loan. Therefore, he believes that this is not an accessory home occupation. But rather what the zoning bylaw refers to as a contractor shop or yard, either indoor or outdoor, which is not a permitted use in this zoning district and is also a substantial increase in intensity of use from what was originally permitted for this property, which was a flower shop. Atty. Dayne and Mr. Thatcher are concerned that granting this special permit for the accessory structure will only result in the current commercial business use growing substantially on the premises with more activity, traffic, trucks, and noise on the site.

Atty. Dayne stated that the original Bennett florist business on the site in the 1950s may have qualified as an exempt agricultural or horticultural use. However, the Board of Appeals (BOA/ZBA) used a special permit in 1955 for a non-confirming use to construct the attached florist shop attached to the greenhouse. It was permitted as a conforming use, which also means that the use cannot be changed, altered, or expanded. Mr. Bennett later went back to the BOA to ask for an expanded use for lawn care and was denied. Atty. Dayne argues that the only permitted use on this site was a florist shop. The property use has been expanded into the commercial landscaping business, without approval.

Atty. Dayne submitted photographs and documentation to prove that the current use true commercial use in a residential zone. The photos show commercial trucks, trailers and plows and on the current site, and well as piles of construction materials which demonstrates that it is a contractor's yard. Overall, this is a very different use than the permitted Bennett florist shop.

Mr. Thatcher stated that he was happy when this property went up for a sale a few years ago because he thought it would become full residential use again instead of falling back to further unpermitted commercial use. When Mr. Fougere purchased the property, he obtained a letter from the Building Inspector stating that he had a by-right use of the property. That is all the letter stated. It did not state that anything else, nor did not give permission for any other use or an expansion of use, nor did it conduct an evaluation of the current business. However, Mr. Fougere is not simply conducting a landscaping business out of his home, he has a full contractor's yard onsite. He has employees regularly onsite beyond his family members, and frequently having his trucks and equipment running before 7:00 a.m. Which is far more extensive than the by-right use. Mr. Thatcher is very concerned with the expanded unpermitted use. He believes it is an extensive abuse of the zoning bylaw.

Mr. Thatcher pleads with the Board that if the members grant approval of this accessory structure, that the Board also includes considerable special conditions to ensure the business use complies with the intended zoning for this neighborhood, and that there are also look-back provisions in the decision to reevaluate the business use on a continual basis for subsequent years perhaps when the business license is up for renewal every four years, and that the renewal process allows for public comment. The public counts on the Planning Board and Board of Appeals to uphold the zoning uses and abutters' interests. Mr. Thatcher has had communication with both boards expressing his complaints since the applicant began his business on site years ago.

Judy Luskin, 34 Stedman Street – Ms. Luskin has lived at her home since 1978 (44 years). She is concerned with potential increased traffic from this property to the Dalton Road and Stedman Street intersection, and the associated increase in noise from this business to the neighborhood. Her only concern is that the proposed use may increase the volume of trucks, noise, and traffic to the

neighborhood which is already an ongoing general issue which the neighborhood has not been able to get any relief from after complaining for many years.

Board Discussion:

Chair Raisbeck stated that approving this structure for storage of antique collections may not be as concerning in a residential neighborhood. Unlike the proposed business use. However, the purview of allowing the business and/or commercial use lies with the Building Commissioner and ZBA, not the Planning Board.

Ms. Araway stated the Board does not have the authority to expand on a non-conforming use, which is the case with this proposal. The ZBA does not have the authority to authorize the non-conforming use either. They might approve it, but the neighbors would then appeal it to court and the case would be immediately overturned. Furthermore, the previous use as a florist shop was commercial non-exempt agricultural use which is indeed permitted in RB district. Currently, the property is operating as an industrial use as a contractor's yard which is not allowable. Ms. Araway clarified that the owner has a business license/permit, but not a variance from the ZBA to use the property as a contractor's yard.

The Board would like to see the Building Commissioner's letter allowing Mr. Fougere to operate as commercial use, which was not included in the application packet.

It is unclear to Mr. Belansky what the approved/permitted property use. He suggested that the Board can act upon the current application request for the accessory use. However, because testimony has been presented (regarding unpermitted property use), the board may want to continue this public hearing with the intent to get more information from the applicant, including a copy of aforementioned Building Commissioner's letter, or to meet with the current Building Commissioner to get a new letter that clarifies or reconfirms the zoning status of this property.

Mr. Shanahan asked Mr. Fougere how he came up with the square footage of the proposed garage because it is approximately 900 sq. ft. over the total sum of the other structures that will be demolished. Mr. Fougere stated that he estimated this size to give him ample space for all of his storage, including overstocking of equipment and supplies he purchased due to the pandemic. Both Mr. Shanahan and Ms. Connolly have concerns with what the structure will be used for, considering that the trucks will continue to be parked outside this structure along the shed area. What will the structure be used for? Mr. Fougere only stated it would be used for his home business purposes.

Ms. Tanini stated that she has a fundamental concern with the size of the accessory structure; it is the size of a house.

Chair Raisbeck believes it behooves this Board to continue the hearing to get more historical, zoning and permitting information regarding this property before granting a decision. He would like to see a definitive statement from the Building Commissioner.

The Board clarified for a resident in the audience that the RB district is defined as low-density single-family one-acre lots. There may be exemptions for some commercial uses that were grandfathered in before the zoning districts were established or via special permits or variances.

Motion: by Ms. Connolly to continue this Public Hearing to July 13th.
Seconded by Mr. Shanahan. **Motion carries, unanimously, 7-0.**

- 2) **270 Billerica Road – DH Property Holdings** – for demolition of the existing structure and construction of an 85,000 square feet industrial warehouse building 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 87, Block 291, Lot 1 and consists of approximately 6.99 acres. The applicant requests special permits per Article XI, Major Business Complex, Article XIV, Aquifer Protection, and Site Plan Review per section 195-104 and any other permit relief as may be required under the Chelmsford Zoning Bylaw to allow the proposed use/project.

Attorney Douglas Deschenes from Finneran & Nicholson, P.C. was representing the applicant. He introduced others involved in this project proposal: Michael Bennett, Vice President and Head of Development for DH Property Holdings in New York; Kasey Ferreira, civil engineer, from Howard Stein Hudson; and Kerry Pike, traffic engineer, also from Howard Stein Hudson.

The project appeared before the board for a preliminary review several months ago. The property is located in limited industrial zone (IA) and currently houses an unoccupied office building that was constructed in 1985. The current building is two-story with 51,000 sq. ft. footprint and approximately footprint and 102,000 sq. ft. of gross office space.

The proposed project is to demolish the current building and construct a one-story building of approximately 81,450 sq. ft. building to be used as a warehouse distribution center with 16 loading docks. The proposed use is allowed by-right. The proposal is not seeking any waivers, nor is it seeking CEIOD applicability, because it is a very straight forward project. Due to the large size, it requires a Major Business Complex special permit. Therefore, this is a confirming project.

Att. Deschenes pointed out that they will be submitting a Notice of Intent to the Conservation Commission because some of the work will occur with the buffer zone of bordering vegetated wetlands and requires an Order of Conditions from the Commission.

Ms. Tanini asked what the hours of operation will be for the business. Atty. Deschenes answered that they only have a potential tenant. Therefore, the hours have not yet been established.

Mr. Ferreira gave a summary of the civil engineering aspects of the project. They are proposing to maintain the two current entrances. The signalized entrance at the intersection of Billerica Alpha roads will be used for truck traffic. The second entrance will be solely used for vehicular/employee traffic. The parking lot will have a total of 163 total parking spaces. Since the site is previously developed, they are proposing site drainage under redevelopment stormwater standards. The overall impervious surface area will be reduced by 11, 946 sq. ft. There is an existing sewer manhole onsite, and that will be maintained.

Ms. Pike summarized the traffic study report. Six intersections were analyzed for this study along Billerica Road: the entrance to the site, Alpha Road, Elliott Street, Mill Road and the two Route 3 ramps.

Mr. Belansky suggested that if the Board decides to have this project evaluated under peer review, that they may not want to dive too deep into traffic questions tonight. But rather allow the peer reviewer to do so. The Board did agree to have this project peer reviewed. Mr. Belansky will follow up on that.

Ms. Araway read the departmental comment letters from Fire Prevention Office and DPW/Town Engineer, Building Commissioner. No comments were received from Board of Health, Police Traffic & Safety Office, and Water District.

Public Comment:

Brian Latina, 15 Jessie Road, Town Meeting Representative for Precinct 9 – Town meeting created an overlay district over the current 65 acres of IA district in order to bring in more variety of business use in this district. Chair Raisbeck stated that this proposal is not for a CEIOD, it is an IA by-right business use for the property. The reason the project is before the Board is due to the requirement for three special permits. Although the majority of residents and Board members would like to see the overlay district be fulfilled with high-tech R&D businesses, these proposals have yet to come before the Board. It is an appropriate use of the underlying zoning district. Mr. Latina's second concern is the reduced tax revenue to the Town of having a distribution warehouse versus an office building, as it is currently taxed.

Glenn Thoren, 18 Pinewood Road, Town Meeting Representative for Precinct 7 – Read his comment letter from April into the record. Mr. Thoren's letter also expressed concern that the proposal for this property is not compatible with the CEIOD overlay district.

Chair Raisbeck explained that the Planning Board has two distinct roles. A planning role and a regulatory role. For tonight's public hearing, the Board is wearing their regulatory hat. With that said, the Board cannot distinguish the "best use" of a property. The proponent is here with a by-right use of their property.

Mr. Walsh suggested that the applicant improve the building's west elevation to improve visibility from the roadside which is the main entrance to the Town from Route 3.

Ms. Araway emphasized that indeed the Board cannot deny this project because a warehouse is a by-right use of the property within this district. However, given the proponent is requesting a larger building which requires a Major Complex special permit, it is indeed in the Board's purview to review the building design and access to ensure that it is compatible with the high-tech industrial park character that it will be located in. Therefore, her main concern is that the applicant has their loading docks on the side of the building where it is highly visible from the road, which is not compatible with an office park, and there is plenty of room on the property to relocate the loading docks to the back of the building.

Ms. Araway did express to the Board that although they cannot deny this project, the Board needs to decide what it can strategically do in the months ahead to prevent a cluster of this type of warehouse use from being developed in Town.

Motion: by Mr. Shanahan to continue this Public Hearing to July 13th.
Seconded by Ms. Araway. **Motion carries, unanimously, 7-0.**

Motion: by Mr. Shanahan to get a peer review of this proposal.
Seconded by Ms. Araway. **Motion carries, unanimously, 7-0.**

NEW BUSINESS/DISCUSSION:

Work Session scheduled for July 27th at 7:00 p.m.

MEETING MINUTES TO APPROVE: None

ADJOURN

Motion: by Mr. Shanahan to adjourn the meeting at approximately 9:40 p.m.
Seconded by Ms. Tanini. **Motion carries, unanimous 7-0.**

Meeting minutes respectfully submitted by Becky DaSilva-Conde, Departmental Assistant.