

Town of Carlisle

MASSACHUSETTS 01741

Office of
PLANNING BOARD

66 Westford Street
Carlisle, Massachusetts 01741
Tel. (978) 369-9702
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Minutes January 25, 2021

Minutes 1/11/21

Budget

Continued public hearing on application for Accessory Apartment Special Permit for 54 Judy Farm Road, Map 16, Parcel 81-65, Justin Fishlin, applicant
Continued public hearing on application for Accessory Apartment Special Permit for 998 Bedford Road, Map 11, Parcel 14-A, Dale Joachim and Myriam Fleurimond, applicants
Continued public hearing on application for Accessory Apartment Special Permit for 27 Old East Street, Map 25, Parcel 27-5, Terry Holsinger, applicant
Notice of receipt of applications for four new Common Driveways serving a total of 11 lots on Acton Street and West Street, within 2000 ft of the intersection of these roadways. (public hearings scheduled for 2/8/21)
Request for minor change to Residential Open Space (ROSC) Special Permit issued 7/29/19 (request of Now Communities LLC)
Master Plan Steering Committee (MPSC) update
Liaison Reports

Co-Chair Madeleine Blake called the virtual meeting to order at 7:00 pm. Co-Chair Pete Yelle and members Ed Rolfe, Rob Misek, Jason Walsh, Adelaide Grady, Sara Smith and Planning Administrator George Mansfield were present. Planning Administrator Mansfield hosted the meeting on a Zoom platform.

Assistant to Planner Gretchen Caywood, Master Plan Steering Committee (MPSC) Chair Jack Troast (Concord St) and members Stacy Lennon (Stearns St), Kerry Kissinger (Elizabeth ridge Rd), John Ballantine (Fiske St), Kate Reid (Carleton Rd), Bob Zogg (North Rd), and Mary-Lynne Bohn (Westford St), Justin Fishlin (Judy Farm Rd), Sheryl Myers (Nashua, NH), Dale Joachim (Bedford Rd), Meg Holsinger (Concord, MA), Steve Lentini (Billerica, MA), Justin Daghish (Old East St), Dan Gainsboro (Now Communities, LLC, Concord, MA), Pam Brown (Brown and Brown, Bedford, MA), Christina Christodouloupoulos (Hemlock Hill Rd), and Bob Zielinski (Carlisle *Mosquito*) were also in attendance.

Continued public hearing on application for Accessory Apartment Special Permit for 54 Judy Farm Road, Map 16, Parcel 81-65, Justin Fishlin, applicant

Co-Chair Blake opened this continued public hearing. Applicant Justin Fishlin and the future AA resident, Sheryl Myers, were present. Co-Chair Blake explained to the applicant that the draft Special Permit Decision is not yet ready for the Board's review, and that the hearing will need to be continued to the 2/8/21 PB meeting at which time the document will be ready for review. The applicant agreed that this works for his schedule. Planning Administrator Mansfield confirmed to the applicant that he has all the information required to prepare the decision. Rolfe moved and Smith seconded the continuation of this public hearing to 7:00 pm on 2/8/21, and the motion was approved unanimously (7-0) by roll call vote.

Minutes

The Board reviewed the draft Minutes from the 1/11/21 PB meeting. Grady moved that the PB approve the Minutes as drafted, Misek seconded the motion, and it was approved unanimously (7-0) by roll call vote.

Liaison Report

Co-Chair Blake provided an update on the Municipal Vulnerability Preparedness/Hazard Mitigation Plan (MVP/HMP) work and explained that the Select Board (SB) will hold the public meeting for the HMP presentation on the work and process at its 2/9/21 meeting.

planning Bd
1/25/21
meeting materials
p. 1 of 23

Budget

PB Treasurer Misek reported on his recent meeting with the Finance Committee (FinCom) for an initial discussion for the FY22 budget, indicating that with no requests by the PB for budget changes, the discussion went smoothly.

Notice of receipt of applications for four new Common Driveways serving a total of 11 lots on Acton Street and West Street, within 2000 ft of the intersection of these roadways. (public hearings scheduled for 2/8/21)

Co-Chair Yelle informed the Board that common driveway (CD) special permit applications have now been filed for each of the four proposed CDs on a portion of the Valentine property. The lots these CDs are proposed to serve were created in 2008 by ANR plans submitted to and endorsed by the PB. Co-Chair Yelle noted that two of the proposed driveways will require waivers to the Boards Rules and Regulations for Common Driveways, as they would be over 1000 ft long. Co-Chair Yelle explained that he and Planning Administrator Mansfield had met with the applicant's engineer to view the plans and applications that were submitted, and to advise the engineer on topics he should be prepared to discuss. Mansfield said that the applicant's engineer has had an initial meeting with the Fire Chief, but that more discussions will be had concerning fire protection provisions. He pointed out that there is an existing trail easement on the Valentine property that could be connected to the Bruce Freeman Rail Trail, and that this could be memorialized in the special permit decision documentation.

The Board discussed possible peer review engineering firms for this project, and Co-Chair Yelle suggested that the Board review the current expertise and staffing of a few of the firms the Board has utilized for peer review, and to then select a peer review engineering firm at the start of the hearing for these applications, which is scheduled to begin on 2/8/21.

Continued public hearing on application for Accessory Apartment Special Permit for 998 Bedford Road, Map 11, Parcel 14-A, Dale Joachim and Myriam Fleurimond, applicants

Co-Chair Blake reopened this hearing for which applicant Dale Joachim was present. Joachim provided revised floor plans for the AA using inner dimensions (rather than the external dimensions of the secondary structure, as had been used previously) and for the first floor of the secondary structure. He explained that these floor plan dimensions now agree with the dimensions in the plans that the contractor utilized for the area and percentage area calculations, and that the apartment floor area is 1200 sq. ft., thereby not exceeding the limit for size of an AA. Co-Chair Yelle asked the applicants to provide signed and dated copies of these revised plans for Planning Board records.

Planning Administrator Mansfield confirmed that he now has all the information he needs to prepare a draft special permit decision for review at the next meeting. Grady moved and Rolfe seconded the continuation of this public hearing to 7:10 pm on 2/8/21, and the motion was approved unanimously (7-0) by roll call vote.

Continued public hearing on application for Accessory Apartment Special Permit for 27 Old East Street, Map 25, Parcel 27-5, Terry Holsinger, applicant

Co-Chair Blake reopened this public hearing, and the Board reviewed a revised draft Special Permit Decision. Blake reported that the Board of Health (BOH) has proposed a revision to Condition 1 of the draft which relates to the current septic system:

'Continued occupancy until the system can be brought into compliance is subject to any temporary conditions imposed by the Board of Health for the protection of public health and the environment.'

On discussion, the Board agreed to include this verbiage in Condition 1 of the document. Bob Zielinski (Acton St) asked if there is any deadline assigned to the condition regarding provision of adequate screening of the view from the AA to the neighboring residents at 15 Old East St, and Co-Chair Blake said that there is a standard of reasonableness implied in that condition, and so no exact deadline is necessary.

The Board approved the Special Permit Decision as drafted and authorized that it be finalized and filed with the Town Clerk's office. Smith moved that the Board close this public hearing, Misek seconded, and the motion was approved unanimously (7-0) by roll call vote.

Request for minor change to Residential Open Space (ROSC) Special Permit issued 7/29/19 (request of Now Communities LLC)

Developer Dan Gainsboro and his attorney Pam Brown were present for this discussion. Brown presented the applicant's request for the Board's consideration of a minor change to the ROSC Special Permit issued July 29, 2019. Brown explained that Condition 3 of the Special Permit requires that the deed to the Open Space (OS) be recorded prior to the issuance of the first building permit, but that due to Covid-19 and other reasons, NOW Carlisle 225, LLC has not been able to close on the purchase of the property, and therefore cannot record the OS Deed. Brown further explained that closing is anticipated in March 2021, and site work has started with agreement of the current property owner, and it is expected that up to 5 building permits could be requested prior to that time. Brown asked if the Board would consider memorializing a minor change to indicate that the Open Space Deed will be recorded prior to issuance of the 6th building permit rather than the first. She had provided the final form of the Open Space Deed to the Board, along with a written request for this change, well prior to the meeting.

The Board discussed this request, had no questions, and felt that the request was reasonable and would represent a minor change. Misek moved that the PB modify Condition 3 in the ROSC Special Permit to provide that the Open Space Deed transfer to the Town will be recorded on or before the 6th building permit is issued rather than the first. Rolfe seconded the motion and it was approved unanimously (7-0) by roll call vote. The Board will issue a letter to Gainsboro documenting this minor change.

Master Plan Steering Committee (MPSC) update

Co-Chair Blake explained that several of the MP Topic Captains were present from the MPSC to provide an overview of their work and how they see it developing.

MP Concept Leader Stacy Lennon discussed the Existing Conditions (ECs) reports, pointing out that they each have 3 overall sections: 1. 'Facts on the ground,' which includes all data and information accumulated on a topic, 2. 'What we have heard,' summarizing input on the residents' hopes, concerns and desired outcomes on a given topic, gathered from various public engagement events from mid-2018 through March 2020, and 3. Civic Moxie's 'things to think about' based on their take on the first two sections. Lennon explained that the MPSC has been working on getting these reports to an adequate level of completion, and that 7 reports have been passed forward, with 2 still pending. The Open Space and Recreation (OS&R) EC report is waiting on the finalization of the updated OS&R Plan, which is underway. The Land Use EC report requires completion of mapping work.

Facilities Captain John Ballantine explained that his team is looking at a possible buildout scenario for the town for 2030 or so, based on the buildout analysis developed by Civic Moxie which projects a 20% increase in the number of housing units to 2300, leading to a population projection of 6500 residents. This could represent a 20% increase in tax revenue but will likely change the resulting facilities needs. Ballantine explained that based on current demographics, school enrollment could actually drop, but that the biggest issue would be fire and police needs for the town. What kind of facility would be needed? Where could a sizeable combined facility be located? Would an on-call fire department be needed at that time and, if so, how could they be housed? Ballantine noted that these are some of the questions his team is looking into. He also saw a community center as a very significant priority, adding that it would be important to know if residents would support the construction of a community center, and noting that data shows that the churches are no longer the major congregation sites they once were, and there is nowhere else in town to gather. Misek cautioned about considering needs vs. wants, and Ballantine agreed that the community center is a more discretionary item.

Grady asked if this growth scenario would cause the need for a full-time fire department, and Ballantine said that there isn't a clearly predictable population break point where this would occur. MPSC member Kerry Kissinger noted that the rate of growth will be key to determining future needs at any given timepoint and pointed out that the population has grown 27% in the past 40 years, but that there are much fewer developable parcels than 40 years ago. Kissinger said that it could be another 20 years before a volunteer fire department is no longer sufficient. Co-Chair Yelle pointed out that while the number of structure fires has been trending down, the need for ambulance services is increasing, reinforcing that life services are key for the town.

Co-Chair Blake referred to some statements in the EC report on this topic concerning well and septic in town, and she pointed out that how much water and how much septic treatment our land can accommodate is a pretty foundational question for many things that are being considered. She asked how information will be gathered on this and how land capacity in this regard will be assessed. Ballantine said that geologist Tony Mariano, also a current BOH member is a valuable source of information on this, as is the engineering firm Stamski and McNary, Inc., which is the engineering firm most commonly employed by project applicants, and is very familiar with Carlisle's soils and siting septic and well facilities in town.

MPSC Member-at-Large Kerry Kissinger spoke about the EC report on Economics and Demographics, noting that there has not been much work to be done on the EC report itself, but that he has been gathering data on what peer towns have been doing. Kissinger explained his numerous criteria for selecting peer towns, including: 90% or greater residential tax base, over \$100,000 per capita income, population less than 20,000, water and sewer largely by well and septic, and he noted that these towns seem to be facing the same issues. He felt that this data combined with the EC report provide a good foundation for considering buildout. Kissinger did point out that in terms of economic and business development at a level needed to affect the bottom line, Civic Moxie had said this was not at all feasible with the current zoning. Kissinger explained that he and the MPSC members are looking at data from 7 other towns on a range of topics and utilizing it to go forward. They are also looking at the local government functions (e.g. fire department), and he noted that Carlisle is not out of line with these other towns. Co-Chair Blake asked Kissinger to provide his spreadsheet of data on these towns to the PB.

MPSC Housing Captain Kate Reid explained that her team is looking at the future of housing needs in town, particularly given the aging population, who are looking for a place to live in town that requires less maintenance and is more affordable. Reid referred to the large increase in land values and housing prices over the decades and noted that many of the long-time residents could not afford to buy their current home today. Reid explained the need for increased housing diversity while maintaining the nature of the town. Her group will be looking at different development approaches. Misek suggested that it would be helpful to have data on the balance of OS vs development over time, and that we should think about whether the current amount of OS may be sufficient, and that the town needs guidance in that respect. Reid agreed and again stressed the need for varied housing, but she said that with the onerous 40B regulations, the use of 40B may not be the best affordable housing approach for the town. Grady said that in her experience there are some market-based solutions that can be explored for the town. She pointed out that Carlisle is over-capacity for septic since there are many more bedrooms than people in most homes and septic capacity is based on bedroom count. Grady explained that it is bedroom count that is key when looking at development capacity.

MPSC Energy and Sustainability Captain Bob Zogg explained that his team is focusing on greenhouse gas emissions, and that the Energy Task Force's (ETF) "Path to Zero Emissions" report provides good background information and lays out a conceptual path to decrease our carbon footprint over 20 or so years. This information can be used in making decisions for the town going forward. Zogg added that the EC report on Sustainability utilizes the ETF's analysis. He explained that for the resiliency component of sustainability – managing changing weather and greenhouse gas emissions – he plans to tie into the Municipal Vulnerability Preparedness (MVP) work that is underway. Zogg concluded this topic by pointing out that a paid staff person, full or half-time, is essential to addressing energy and sustainability on an ongoing basis for the town. The result will be increased energy efficiency and less use of fossil fuels, with the use of alternative energy from renewable resources. Zogg said that the key question is: do we have the will in the community to do this?

Zogg also addressed the topic of transportation, with the goal of working to streamline transportation in town, and a focus on supporting sustainability by moving from fossil fuels to electric. He pointed out the need for more charging stations, and the key of getting people to drive less.

MPSC Chair Jack Troast spoke about the topic of Cultural and Historic Resources and the EC report on this topic. Troast explained that these resources do matter to the residents, and that the MPSC may consider a demolition delay bylaw and also increasing the size of the Historic District. Troast noted that the community center does not have universal support among the residents.

With the updates concluded, Co-Chair Blake asked for questions from the Board. Co-Chair Yelle asked MP Outreach Captain Mary-Lynne Bohn for an update. Bohn explained that they are putting together an "outreach schedule," developing the second survey and updating the website that was laid out by the summer interns. Bohn offered to return to the PB in late February or early March with the outreach plan and schedule.

Co-Chair Blake asked Reid if her team is actively working on proposals for more diverse housing, and, if so, on what basis they are proceeding since the summary of public feedback in the EC report does not indicate any consensus in this area. Blake also asked Reid for her opinion on what has kept the town from having housing diversity. Reid said that they are looking into building three housing models to present to the public to see where we can find consensus, and these would be included in the survey to the residents.

Misek stressed the importance of focusing on the town's needs over the next few decades as opposed to wants, as he felt that these, along with their cost, could override the wants. He pointed out that the residents have fought against more diverse housing at Town Meeting. Grady explained that there is a misperception of what affordable housing can be, and that we need to show the residents what the options are. She added that the recent change to a simple majority for approval of changes in zoning bylaws may help going forward. Troast pointed out that the rental options in Carlisle are limited, and that some concepts for this should also be presented. Co-Chair Yelle agreed that the MPSC does need to get resident input on housing options that are amenable to them, and it was noted that detailed ideas that include imagery and design need to be presented. Lennon reiterated that she and Concepts Captain Janne Corneil want to put forward three visions to the residents for their input.

Co-Chair Blake thanked the MPSC members for their updates and suggested a schedule of one topic update per PB meeting.

At 9:07 pm, Misek moved to adjourn the meeting, Grady seconded the motion and it was approved unanimously (7-0) by roll call vote.

Respectfully Submitted,

Gretchen Caywood
Assistant to Planner
Carlisle Planning Board

Master Plan Budget--FINAL
 Revised: December 9th 2020
 Budget Period: January- December 2021

| Expense Item | Proposed Budget | Comments |
|--------------------------------|-----------------|--|
| Planner / Project Manager | \$75,000 | Coach MPSC, develop/track detailed plan/timeline, review deliverables, manage risk, layout report see Note 2 |
| Expert/ Intern Support | \$11,900 | Final plan maps, required GIS, graphics, editing see Note 3 |
| Support to PM/Chair | \$4,200 | Administrative support |
| Materials /Other Expenses (\$) | \$3,900 | Costs of mailers/ Zoom account/ Other |
| | \$95,000 | |

NOTES:

Note 1- Remaining \$96,000 of budget at 12/7/2020

Note 2- Based on work scope of 40 weeks- Jan/ Feb to Sept/ Oct- average 12.5 hours per wk at avg hourly rate of \$150

Note 3- Parcel database, GIS analysis, maps, technical editor and other subject matter experts.
 Includes hourly as well as fee based services

Master plan

Email from Stacy Lennon re the Existing Conditions reports (forwarded by Madeleine on 1/11/21)

Hello Planning Board members,

Please see below for the existing conditions reports forwarded by the master plan committee.

We have invited the master plan captains to come to our meeting on January 25, and I anticipate that will be a better time to ask any questions and discuss these reports, rather than this Monday January 11, when we have several apartment matters. But I wanted to send out the reports so that you have as much time as possible before January 25 to review them.

Madeleine

Sent from my iPhone

Begin forwarded message:

From: Stacy Lennon <stacy.heen@gmail.com>
Date: January 8, 2021 at 6:16:53 PM EST
To: Madeleine Blake <madeleine.blake@comcast.net>
Cc: Jack Troast <jtroastjr@gmail.com>
Subject: Existing Conditions Reports

Hi Madeleine:

Please be advised that most of the Existing Conditions Reports can be found on the Master Plan Google drive through the following link:

https://drive.google.com/drive/folders/14J4PJp0_p8DTTWv-XdH3V9MQ0iEtQcCa?usp=sharing

Included in the folder are the following reports: Transportation, Energy and Sustainability, Public Facilities and Infrastructure, Housing, Economic Base, Demographics, and Cultural and Historic Resources. (Please note that two reports are not included in the file: The Open Space and Recreation Report as we are awaiting completion of the town's own Open Space and Recreation plan; and the Land Use Report which cannot be completed until the Committee completes the mapping data base of the town and generates relevant maps.)

The Existing Conditions reports generally include three sections:

1. Each report captures the "facts on the ground" – information, data, historical trends, etc. relating to the aforementioned topics. Given Carlisle's decentralized nature, the background information contained in these sections has never before been documented in one place. Civic Moxie got these sections to varying levels of completion and accuracy during its tenure, and MPSC members have since edited them for clarity and accuracy to the best of their abilities. This information is descriptive and not analytical in nature; it should be properly understood as background information.
2. Each report also contains a "what we heard" section: a narrative summary of the concerns, hopes, and desires of Carlisians, related to the topic at hand (land use, facilities, etc.), as shared during various public engagement events between June 2018 and March 2020. These themes

PR
p7 of 23

do not necessarily flow directly from the "facts on the ground" information; nor should they be interpreted as definitive directions the master plan will go. They are indicators of what the community (so far) sees as Carlisle's strengths, challenges, and opportunities.

3. "Things to think about": content in this section comes from Civic Moxie; it is their set of suggestions based on their read of the "facts on the ground" information and "what we heard."

The Existing Conditions reports serve two purposes:

- Serving as reference documents that offer background information on each topic in Carlisle, preliminary information about what the community thinks about that topic," and "CivicMoxie's initial ideas about what to consider regarding the topic";
- Informing the subsequent analysis and generation of master plan options & alternatives for further public input and refinement.

Please circulate to Planning Board members. Thank you!

Best,
Stacy

PB
PB of 23

re: 27 Old East St
Acc. Apt

20th January 2021

Elizabeth and Justin Daghish
15 Old East St
Carlisle
Ma 01741

George/Gretchen/Carlisle Town planning board,

We listened to the proceedings of the January 11th 2021 planning board hearing. There seemed to be some confusion as to which windows on the accessory apartment overlooked our property. We were told we would not be able to speak during the hearing so are writing to clarify the accessory apartments impact on our privacy:

1) Since November 20 planning board hearing the applicant has installed a wooden 6ft high fence around the 1st floor windows, this is a welcome addition and we suggest it be considered as a condition of the permit that this fence is maintained as is.

2) Our main concern over privacy is the window circled on the attached picture, it is a large window into the only living /sleeping room in the apartment i.e., a tenant will spend most of their time in this room night and day. This window overlooks our pool, ours and our daughters' bedrooms and bathroom. We suggest that this window is removed or moved to a side of the house facing 27 Old East St.



Lastly, we urge the Carlisle planning board to consider the following context:

PG
pg of 23

1. The apartment overlooks our house impacting our privacy and way of life.
2. After Justin Daghish had first raised verbal concerns to the applicant and agreed to discuss further, he returned from a trip to the UK to bury his terminally ill father to find a Town of Carlisle policeman living in the unpermitted apartment.
3. The apartment access crosses our land for which we do not grant rights. No liability has been assigned for the shared driveway section.
4. The town taxes us on our 2-acre lot for which this board has voted to assign access rights to our neighbors.
5. The building commissioner has asked our neighbors to apply for an accessory apartment and approved the building as meeting state building code without providing verifiable evidence.
6. Neither the building commissioner nor this planning board have required apartment plans showing internal walls, windows, etc.
7. The requirement for adequate septic provision prior to permit hearing has been waived by the board.
8. Occupancy appears to be accepted by the board even though no evidence has been provided that the accessory apartment is connected to a septic system and scale of the septic system is understood to be too small.
9. The building commissioner's former tenant also uses our land to access a second unpermitted use based out of 27 Old East St.

We have tried to frame all this as lightly as possible thus far, to keep within the remit of the Carlisle town planning process that the building commissioner decided upon in response to our complaint last year.

Sincerely,

Elizabeth and Justin Daghish

PD
p/10 of 23

Woodward Village

BROWN & BROWN, P.C.

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* ALSO ADMITTED IN NEW HAMPSHIRE

January 21, 2021

Ms. Madeleine Blake, Chair
Carlisle Planning Board
66 Westford Street
Carlisle, MA 01741

RE: Woodward Village ROSC – Request for Minor Change

Dear Ms. Blake and members of the Board:

On behalf of NOW Communities, LLC and NOW Carlisle 225, LLC we request the Board's consideration of a minor change to the ROSC Special Permit issued July 29, 2019. Condition 3 of the permit requires that the Open Space deed be recorded prior to issuance of the first building permit. Due to COVID and other reasons, NOW Carlisle 225, LLC has not been able to close on the purchase of the property; however, at this time, all permits are in place and site work has started with agreement of the current owner. Closing is anticipated in March 2021; however, we expect up to 5 building permits to be requested prior to that time.

The final form of the Open Space deed is attached and can be executed to be held in escrow by the town if desired, however, it cannot be recorded until NOW Carlisle 225, LLC takes ownership. We therefore respectfully request that the Board memorialize a minor change to indicate that the Open Space Deed will be recorded prior to the 6th building permit rather than the 1st.

We look forward to seeing Woodward Village come to fruition and would be happy to respond to any questions at your upcoming meeting..

Very truly yours,



Pamela J. Brown

Enclosures

POB
p 11 of 23

MB Goals
(From recent
workshop)

Gretchen Caywood

From: Madeleine Blake <madeleine.blake@comcast.net>
Sent: Thursday, November 19, 2020 4:16 PM
To: marc@mtr.net; 'KATE REID'; 'David Model'
Cc: 'Peter Yelle'; George Mansfield
Subject: Planning Board goals from goal-setting session

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Marc,

Thanks very much for running the goal-setting workshops for the land use boards. It was very worthwhile.

To follow up, here are the goals George and I agreed on:

1. By March 31, 2021, come up with a plan to manage and transition away from Planning Board paper files, including determining which files to scan, which to discard, and which to store off site. This will include a plan to manage old files for closed matters, as well as a plan for how to arrange and store newly-created files going forward. As part of this plan, we will sample actual files to make sure the plan is workable. The plan will also include a proposal for indexing any retained files, whether in the office, offsite or electronic. By June 30, 2021, our goal is to substantially complete moving away from the legacy paper files, whether by scanning, storing off site or discarding, or a combination of all three.
2. George and the Planning Board will revise the Board's accessory apartment rules and regulations to reflect recent lessons learned in processing accessory apartment applications. George will create a draft of revised rules by January 31, 2021, the Board will consider the draft during February 2021, and we will complete the process by March 31, 2021.

Let me know if you have any questions – Madeleine Blake

MB
p 12 of 23



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MASSACHUSETTS 01741

Office of
PLANNING BOARD

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**DECISION ON SPECIAL PERMIT
FOR AN ACCESSORY APARTMENT
FOR TERRY HOLSINGER
AT 27 OLD EAST STREET**

DATE OF DECISION: November 9, 2020
DATE OF FILING:

DRAFT

Procedural History

On September 30, 2020, Terry Holsinger applied to the Town Clerk and the Planning Board for a special permit for an accessory apartment under Section 5.6. of the Carlisle Zoning Bylaws, to be located at 27 Old East Street, Lot 27-5 on Assessors' Map sheet 25.

A public hearing on the application was advertised in the Carlisle *Mosquito* on October 2 and October 9, 2020, and notice was posted at Town Hall on October 5, 2020, and mailed to parties in interest on September 30, 2020.

The public hearing was opened on October 19, 2020, and continued to November 9, December 14, 2020, and January 11, 2021. Co-Chairs Blake and Yelle, and Board members Rolfe, Misk, Walsh, Grady and Smith were present for the hearing. Also present were Planning Administrator George Mansfield, Building Commissioner Jon Metivier, and Assistant to Planner Gretchen Caywood, applicant Terry Holsinger (Old East St.), Attorney Steven Lentine (Billerica, MA), Attorney Christopher Alphen (Concord, MA) Meg Holsinger, Chris Holsinger, and members of the public Justin and Elizabeth Bing Daghish, Seth and Lisa Earley, Michael and Laura Quayle (all of Old East St.), Randy Brown (East St.), Kristen Babcock (East Meadow Ln.), Jim Bollman and Ann Hough (Nickles Ln), Laurie Engdahl (Nickles Ln.), Sarah Egerhei Pitkin (Prospect St.), Brian and Marsha Cervantez (Daniels Ln.) and Mike and Kimberly Kasparian (Trillium Way) Also present for this hearing was Bob Zielinski of the Carlisle *Mosquito*.

Between the October 19 and November 9 hearings, the Planning Board conducted a site visit to 29 Old East Street to view the interior and exterior of the apartment.

Materials Considered by the Planning Board

The Planning Board considered the following information:

- a plot plan of the subject lot, prepared by MySitePlan.com, dated 9/30/20, showing the existing house and the existing detached garage, and the driveway, lot lines and setbacks;

- a plot plan of the abutting lot at 15 East St., prepared by GPR Engineering (undated), showing the driveway entrance and the abutting house and pool, submitted by owners Justin and Elizabeth Bing Daghish;
- floor plans and photo elevations of the detached accessory apartment and of the existing residence, plans prepared by Lunig Construction Corp. (undated). and reviewed and approved by the Building Commissioner on 10/18/20;
- calculations of floor areas of the apartment and of the existing residence combined, prepared by Lunig Construction Corp;
- a current list of parties in interest dated 9/18/20, prepared by the Board of Assessors;
- A Certificate of Compliance for the Distribution Box in the current septic system serving the main house, prepared by Chuck Hartwell and dated 9/16/20. No connections to the accessory structure are documented.
- The Planning Board considered written submissions from the following persons:

Letters of support for the petition:

Laurie Engdahl, 66 Fairhaven Rd., Concord, MA - 10/16/20

James and Lauren Catacchio, 85 Old East St. - 9/18/20

Letters of objection to the petition:

Justin and Elizabeth Daghish, 15 Old East St. - 10/15/20 and 10/21/20

Edward and Ruth Bing, 319 Stearns St., Unit 52 – 11/1/20

Sarah and Tayler Pitkin, 130 Prospect St. – 11/1/20

Samantha Rottenberg, 108 Hemlock Hill Rd. – 11/2/20

Brian Wigton and Marsha Cervantez, 55 Daniels Lane – 11/2/20

Michael and Kimberly Kasparian, 40 Trillium Way – 11/4/20

Michael Woods, 20 West St., Groton, MA – 11/4/20

Christopher J. Alphen, Esq., Blatman, Bobrowski & Haverty, LLC,
Concord, MA – 11/5/20

Applicant's response to objections:

Terry Holsinger, 27 Old East St. – 11/8/20

Persons Who Addressed and/or Participated in the Public Hearing

The applicant, Ms. Holsinger, appeared at the October 19 hearing date. Her family members, Rob and Meg Holsinger, appeared on her behalf on November 9. On both dates, Steve Lentine, a family friend, appeared on behalf of the applicant.

Abutters who live at 15 Old East Street, Elizabeth and Justin Daghish, appeared and addressed the hearing on October 19 and November 9. At the November 9 hearing date,

pb
p14 of 25

Attorney Christopher Alphen, representing the Daghishes, abutters at 15 Old East Street, appeared.

During the hearing dates on October 19 and November 9, several neighbors asked to address the Planning Board, including the Quayles, the Earleys, and Jim Bollman and Ann Hough. A former neighbor, Laurie Engdahl, also addressed the hearing. The applicant's son Rob Holsinger addressed the hearing.

Building Commissioner Jon Metivier was present on October 19 and November 9 and responded to questions from the Planning Board.

At the November 9 hearing date, Co-chair Blake asked if any other members of the public would like to speak, including persons who had submitted letters, and there were no additional requests to speak.

Waivers from Planning Board Rules and Regulations

Upon the written request for a waiver, the Board agreed on October 19, 2020 to waive the requirement contained in its Rules and Regulations that the applicant submit a septic system review form signed by the Board of Health. In requesting this waiver, the applicant stated that the current available information regarding her septic system components does not allow the Health Department representative to sign this form. She further stated that if the special permit is approved, she will comply with any conditions set by the Planning Board and the Health Department relative to the septic system. Building Commissioner Jon Metivier stated that Holsinger had her existing system checked and made compliant, but that it is still only a 4-bedroom system, while a 5-bedroom capacity system is required for this 4-bedroom house and a 1-bedroom apartment.

Rolfe moved that the Board grant the applicant's request for a waiver of the requirement to provide a signed Board of Health form, with the understanding that if the Board approved this special permit, the applicant will be subject to any conditions related to the septic system. Grady seconded the motion, and it was approved unanimously (7-0).

At the hearing on November 9, 2020, the Planning Board voted to waive the requirement contained in its Rules and Regulations that the site plan show entrances. Blake explained that for an apartment in a detached structure, this information is not necessarily germane, and further, the Planning Board members viewed the location of the entrances during the site visit, and the floor plan for the detached apartment reflects the entrances to the apartment. Rolfe moved that the Board waive the requirement that the site plan submitted with the application show the entrances and doors, Misek seconded the motion, and it was approved unanimously (7-0).

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P/Sep 25

DISCUSSION

Background

The 29 Old East Street lot is 4.6 acre “pork chop” and currently contains a single-family house, which is the applicant’s residence, and a 2-story detached garage. This detached garage contains the apartment. The 29 Old East Street lot is currently accessed by a shared driveway serving two lots. The existing driveway crosses the adjacent lot at 15 East Street for 40 and then splits, with one fork serving 15 Old East Street and one serving 27 Old East Street. The applicant, Ms. Holsinger, currently resides in the principal residence at 27 Old East Street and has resided there since 1977.

Ms. Holsinger applied for a detached accessory apartment in the existing garage as follows. A section of the first floor will continue to be used as an access way and kitchen, and the second floor will be used as a living area and one bedroom. The apartment will contain a total of 704 sq. ft. The apartment will be entered directly from the outside. One of the garage stalls will also be available for use by the occupant of the apartment, and there is substantial paved area that can also serve as parking for both the main house and the apartment. The total living area of the existing house and the detached structure is 3,581 sq. ft. The living space of the apartment is 19.66% of the total living space. No substantial exterior changes to the detached garage are proposed. No additional landscaping was proposed, except screening as conditioned by the Planning Board. All setbacks conform to zoning requirements.

Steve Lentine, an attorney and a friend of the applicant and speaking on her behalf, provided historical background on the property, noting the applicant has lived at the address since 1977 and the accessory apartment in the garage has been in continuous use since 1996. He explained that the apartment has been occupied by family members, friends and town employees over the years, but that Holsinger was unaware that this accessory use was not allowed by right in Carlisle. Lentine stated that he believes the apartment meets all requirements of the Zoning Bylaws, including owner-occupancy of the property, at least a 2-acre lot size, and a 1 bedroom, 704 sq. ft. apartment that is well below the maximum allowed size limit of 1,200 sq. ft.

When the hearing was opened to public input, Justin and Elizabeth (Bing) Daghish, abutters who reside at 15 Old East Street, stated their objection to the apartment, explaining that changing the use from single family to commercial (rental) changes the neighborhood. Justin Daghish stated four reasons for their objection: (1) effect on privacy – that the apartment occupant can see into their house; (2) the driveway is partly on their land, and they have not found any easement allowing it; (3) there are two businesses on the land – the apartment and a that of a landscape contractor; and (4) the septic system is non-compliant for the use. Daghish also stated that attempts to speak with the Holsinger family were unsuccessful, having been referred to their counsel.

Issues Presented During the Public Hearing

a. Purposes of the Bylaw

The purposes of Section 5.6.1 of the Carlisle Zoning Bylaw are met by this application because the proposed apartment will increase the availability of moderately-priced housing for town employees, the young and the elderly. Pursuant to Section 5.6.1.1, the apartment provides an opportunity for a homeowner who may no longer be able to continue physically or financially maintaining her home. Pursuant to 5.6.1.3, the apartment serves to provide a variety of housing to meet the needs of residents. Granting this application is consistent with Section 5.6.1.4, which states that a purpose of the bylaw is to protect the stability, property values and single-family character of the neighborhood. In particular, the outward appearance of the accessory apartment, which is contained in an existing garage, does not alter the single-family character of the neighborhood. Finally, granting this application serves the purpose set forth in Section 5.6.1.5 because it legalizes a conversion and encourages the Town to monitor the conversion for compliance with the state building code. Accordingly, the Planning Board finds that the purpose of this Section of the Accessory Apartment Bylaw is furthered by approving this special permit.

b. Driveway

One of the issues discussed in the hearing was whether there is sufficient ingress and egress to the apartment, as required by Section 5.6.5.7, given that the first approximately 40 feet of the applicant's driveway is a common driveway that crosses the lot located at 15 Old East Street. The Daghlishes, owners of 15 Old East Street, argued that there is no recorded easement over the common part of the driveway. The Daghlishes' attorney, Christopher Alphen, in a letter dated November 5, 2020, argued that the applicant does not have access rights over the common part of the driveway for an additional dwelling unit, which increases the burden on the easement.

According to information provided by Attorney Steve Lentine, speaking on behalf of the applicant, the shared driveway has been in existence since the 1960's, and the driveway is in the same location as when it was installed over 50 years ago prior to the existence of the Daghlishes' house. According to former neighbor Laurie Engdahl, who addressed the hearing, the driveway has been in continuous use since that time. Building Commissioner Metivier explained that this is a pre-existing shared driveway which has been in use for well over 20 years.

The Planning Board concluded that adequate access exists for purposes of Section 5.6.8 of the Bylaw. At present and continuously for at least 20 years, there is and has been access to 27 Old East Street over the existing shared driveway. The Daghlishes' claims that they may limit the use of the bottom 40 feet of the driveway and/or that the permitting of the accessory apartment somehow overburdens an easement have not been formally presented in any court of law, and the Planning Board is not in a position to resolve these claims. Once permitted, the accessory apartment will be an approved accessory use for the residential zone in which 27 Old East Street is located.

Accordingly, the Planning Board finds that adequate access exists for purposes of Section 5.6.8.

c. Septic

The Daghishes and their attorney argued that the septic system for the 27 Old East Street property is not compliant, and therefore the application for a detached accessory apartment should not be approved.

The Planning Board found that the standard contained in Section 5.5.5.6 of the Carlisle Zoning Bylaw – that adequate provision has been made for disposal of sewage, waste, and drainage – is satisfied. The Planning Board granted a waiver as to the filing of the Board of Health documentation, but the Board has also conditioned their approval with deadlines for three septic-related undertakings. The Planning Board is not waiving any substantive requirements, but only granting several additional months to provide the requested information. The Planning Board heard no evidence or indication that there will be any harm in the next several months due to granting this additional time. In addition, as conditioned below, the applicant will be required to upgrade the system as necessary to comply with Title 5 and the Carlisle Board of Health requirements.

d. Abutter Privacy and Effect on the Neighborhood

There was extended discussion on October 19 and November 9 as to whether occupancy of the apartment will be detrimental to the neighborhood or injurious to persons or property under Section 5.6.5.9. The proposed 27 Old East Street garage apartment sits behind and at a higher elevation to the 15 Old East Street home. Mature trees exist between the two structures. The 27 Old East Street garage is set back approximately 77 feet from the property line. The 15 Old East Street property has a pool in the backyard; the pool is approximately 40 feet within the 15 Old East Street property line. There are some plantings along the back of the 27 Old East Street garage that partially obstruct the view from the ground floor kitchen windows. There is also a temporary fence installed along the back of the garage.

The Daghishes and their attorney Christopher Alphen argued that the standard contained in Section 5.6.5.9 is not met because the accessory apartment impinges on the Daghishes' privacy. According to the Daghishes, there is a view into their pool area and the back of their home from the apartment's windows. At the November 9 hearing, in response to questioning from the Board, Mr. Daghish referred to a few locations in the apartment where he felt you could see into his residence, including from the skylights. He added that the orientation of the unit is almost directly toward his house and suggested that the other side of the lot might have been more appropriate for the apartment. Attorney Alphen submitted photographs of the pool area and the back of the Daghishes' home, arguing that the photos demonstrated the impingement on privacy. These photos were attached to Alphen's letter dated November 5, 2020. On November 9, Mr. Daghish addressed this topic again and expressed concern about protecting his daughters living next to a tenant they do not know. He added that the building was not there when his

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P18 of 23

wife grew up in the house and that they want their children to have the same family-centered environment that she had growing up.

On November 9, Lentine, speaking on behalf of the applicant, noted that setbacks are met for the garage, and stated that there is a wooded area between the properties. Lentine noted that if this building were to be removed, a new apartment could be constructed with much less setback. Lentine said that in his opinion, some of the photos that have been provided by the abutters are misleading because they were taken from a closer location than the approximately 117-foot distant garage.

Neighbors Seth and Lisa Earley, residents of 63 Old East Street, said that while the apartment has been in existence for quite some time, they have never had an issue, and this permit will not bring any changes. The Earleys stated their support of the application, adding that permitting this apartment is the right thing to do.

Michael and Laura Quayle, residents of 47 Old East St, referred to their letter of support for the applicant, provided to the Board in advance of the meeting. They said they are 22-year residents and that they do not see any impact of the apartment on the neighborhood, since it has been in place for decades.

In response to questions, the Earleys and the Quayles said that they cannot see the apartment from their homes, mainly due to thick woods, and Mr. Quayle noted that there is less screening in the area between the Daghishes' home and the apartment.

The Planning Board finds that occupancy of the accessory apartment is not detrimental to the neighborhood or injurious to persons or property, under Section 5.6.5.9. There has been no change to the outward appearance of a single-family home and garage. Except for the Daghishes, no neighbors stated that there was an impact on the neighborhood, and the Quayles stated affirmatively that there was not an impact. After making a site visit, the Planning Board members determined that it is difficult to see from the apartment windows to the 15 Old East Street pool area. Planning Board members also noted that the windows in the back of the accessory apartment's second floor are skylights that orient towards the sky. The view from the downstairs kitchen windows is partially screened by plantings; Smith noted that the plantings could be extended towards Nickles Lane to completely screen this view. The windows along the staircase do not face towards the 15 Old East street residence and pool area. The apartment is located approximately 77-78 feet from the property line, which is considerably more than the minimum required setback of 40 feet.

e. Claim that the Apartment is in a Non-Conforming Structure

At the November 9 hearing date, Attorney Christopher Alphen, representing the Daghishes, stated that the garage containing the apartment is a non-conforming structure under Sec. 4.2.2 of the Carlisle Zoning Bylaws because it is closer to the street than the residence. Blake responded that Alphen had an incorrect interpretation of Section 4.2.2., which by its plain language requires only that accessory structures meet the same setback

PO p19
of 23

requirements as principal structure. Blake stated that the Building Commissioner had provided a letter to this effect. Alphen then agreed and withdrew this point.

f. Discussion of Adequate Screening

The Board discussed whether to order a particular type of screening, such as plantings of trees, or opaque window coverings. Attorney Alphen on behalf of the Daghishes requested that the Daghishes “should be part of the discussion” on how to minimize their privacy concerns. The Board determined that it is the Board’s role to decide which conditions to include in the Special Permit. Upon discussion, the Board decided to order a general standard of adequate screening, rather than to specify a particular type of screening.

DECISION:

The Planning Board makes the following findings:

- A. In accordance with Sec. 5.6.1 of the Zoning Bylaws, the accessory apartment will add to the variety of housing available to meet the needs of Carlisle’s residents, provide moderately priced housing for relatives of town residents, legalize conversions to encourage the Town to monitor conversions for compliance with the State Building Code, and protect stability and property values in the area by maintaining the single-family residential character of the neighborhood.
- B. The Planning Board has issued twenty-five (25) previous special permits for accessory apartments, well under the Bylaw limit of 75, and this is the sixth permit issued for an accessory apartment in a detached structure – with a total of 25 allowed in Carlisle per Sec. 5.6.5.1.
- C. The apartment is clearly accessory to the principal residence, being located within part of a separate, detached structure and using a separate entrance, having a floor area not exceeding 1200 sq. ft., and containing less than 35% of the floor area of the principal residence and apartment combined.
- D. The applicant has certified that she will occupy the principal residence in accordance with Sec. 5.6.5.5 of the Zoning Bylaws.
- E. Adequate provision for the disposal of sewage, waste and drainage has been made in accordance with state and Carlisle Board of Health requirements, because the Planning Board, by conditioning their approval with the three undertakings set forth herein, has assured that the standard contained in this requirement will be met.
- F. Adequate provision has been made for ingress and egress to the apartment from Old East Street over the existing shared driveway.

PB
p 20 of 2

- G. Adequate provision has been made for parking for the apartment, which parking is consistent with that of a single-family house.
- H. The occupancy of the apartment will not be detrimental to the neighborhood in which the lot is located or injurious to persons or property.
- I. The lot on which the residence is located contains 4.6 acres of land.
- J. The apartment contains one bedroom.
- K. There is no other apartment on the lot.
- L. The entrance to the apartment is not directly visible from Old East Street and will retain the appearance of the house and garage as a single-family residence, with no substantial exterior changes to the garage in which the accessory apartment is located.
- M. The Building Commissioner has certified that the construction of the apartment is in conformity with State Building Code requirements.

In addition, the Planning Board finds that the requirements of Section 7.2.1 of the Carlisle Zoning Bylaw are met. The Board finds that the principal residence and accessory apartment at 27 Old East are reasonably adapted to the proposed use, and there is proper layout and proper spacing between buildings. As required by the Accessory Apartment Bylaw, the 27 Old East Street structures are conforming and meet the minimum required setbacks.

The Planning Board also finds that the proposed use of a portion of the garage as an accessory apartment will not be contrary to the best interests of the town. As reflected in Section 5.6.2, entitled "Considerations," the town stated in the Accessory Apartment Bylaw that despite any impact on water resources, this impact is offset by "the public benefit afforded by the permitted use." The Planning Board believes, consistent with the stated purposes of the Accessory Apartment Bylaw, that permitting this accessory apartment is not contrary to the best interests of the town.

Sections 7.2.1.1 through 7.2.1.3 define instances when a proposed use will be injurious to public health, abutting properties or to the neighborhood. Section 7.2.2 defines injurious to an abutting property as emitting "vibrations, noise, smoke, fumes, odor, gas, chemicals or other effects observable at lot lines in amounts seriously objectionable or detrimental to normal use of the property." The Board finds that none of the injuries listed in Section 7.2.1 will result from occupancy of the proposed 27 Old East Street apartment.

This special permit is issued subject to the following conditions:

1. The property owner must submit an engineered as-built plan of all existing septic system components, including the tie-in to the apartment, to the Board of Health and the Building Commissioner no later than _____ 2021. If the as-built plan

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p 21 of 2*

demonstrates that the apartment is tied into the existing system, continued occupancy of the accessory apartment shall be allowed pursuant to this special permit until the system can be upgraded in compliance with Conditions #2 and #3 below.

2. The property owner must apply to the Board of Health for a construction permit to upgrade the septic system to accommodate its capacity for five (5) bedrooms no later than _____ 2021.
3. The property owner must apply for and receive a Certificate of Compliance for the upgraded septic system from the Board of Health no later than _____ 2021. Unless the requirements of Conditions #1, #2, and #3 are complied with by the referenced dates, the Special Permit shall lapse, and the Building Commissioner will require the apartment to be vacated within 60 days.
4. The Applicant shall provide adequate screening to mitigate the direct line of sight from either floor of the apartment to the residence and pool at 15 Old East Street.
5. No additional access shall be made from the apartment to the remaining area of the garage other than that shown on the plans submitted with this application and referenced above.
6. The applicant must either allow for periodic inspections by the Building Commissioner, as required by Sec. 5.6.5.3 of the Zoning Bylaws for accessory apartments in detached structures, to confirm that there has been no unauthorized expansion of the accessory apartment or allow for an alternate method of confirmation that is satisfactory to the Planning Board.
7. The permit will terminate upon sale or transfer of title of the property, provided, however, that a sale or transfer shall not dispossess the then resident(s) of the accessory apartment of their tenancy. The new owner or owners may apply for a re-approval of the special permit, which, if the Planning Board finds that conditions at the time of the original application remain substantially unchanged, shall be approved without a new hearing.

Based on the findings and subject to the conditions set forth below, Rolfe made and Yelle seconded a motion to approve this application for an accessory apartment special permit granted to Terry Holsinger for 27 Old East Street, under Section 5.6 of the Zoning Bylaws. The motion was approved by a vote of 7 to 0.

Planning Board vote:

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| Grady | Grant |
| Walsh | Grant |

PB
P 22 of 25

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| Yelle | Grant |
| Smith | Grant |
| Misek | Grant |
| Rolfe | Grant |
| Blake | Grant |

This special permit will lapse if not recorded in the Middlesex North Registry of Deeds within 60 days from the expiration of the appeal period. A copy of the recorded decision shall be forwarded to the Planning Board.

This decision does not exempt the applicant from the necessity of complying with all other applicable federal, state and local statutes, bylaws and regulations.

The Town Clerk has on file a copy of the application, plans and decision. Any appeal of this decision shall be made according to MGL Ch. 40-A, Sec. 17. A copy of such appeal must be filed with the Town Clerk within twenty (20) days after the filing of this decision in the Clerk's office.

Madeleine Blake, Co- Chair
Carlisle Planning Board

PB
P23 of 10