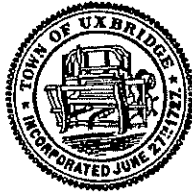


James Smith, Chair
 Barry Desruisseaux, Vice Chair/Clerk
 Joseph Leonardo, Member
 Eli Laverdiere, Member
 Barry Hauck, Member



Uxbridge Town Hall
 21 South Main Street, Room 205
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**PLANNING BOARD MEETING MINUTES
 WEDNESDAY
 December 19, 2018**

Received by
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 Town Clerk

Minutes of the Uxbridge Planning Board regularly scheduled meeting on **Wednesday, December 19, 2018**, at **7:00 P.M.** in the **Board of Selectmen Meeting Room, 21 South Main Street, Uxbridge, MA.**

Present: Chair, James Smith; Vice Chair/Clerk, Barry Desruisseaux; Clerk, Eli Laverdiere; Member Joseph Leonardo; Member, Barry Hauck.

Also present was Town Planner Michael Gallerani and Administrative Assistant, Lynn Marchand.

I. CALL TO ORDER

1. There will be no Planning Board meeting on December 26th.
 The next regular Planning Board meeting will be on Wednesday January 9, 2019 at 7 p.m.

II. ANY OTHER BUSINESS, which may lawfully come before the Board -passed over

III. PUBLIC HEARINGS

Continued from November 14, 2018, PH opened on 9/12/18

1. **FY19-03, Definitive Subdivision Application – The owner and applicant of record, ARIS Group, LLC/Odisefs Tsimogiannis, is seeking approval of a Definitive Subdivision Plan to create 23 Residential Building Lots, Elmdale Estates and (1) parcel of land, which is not to be considered a building lot, to be served by the extension of Old Elmdale Road and the creation of two roadways having a total centerline length of 2,375± linear feet. Property is located on 0 Old Elmdale Road, Uxbridge, MA. The property is shown on the Town of Uxbridge Assessor's Map 25, Parcel 3979. The title to said land is recorded in the Worcester District Registry of Deeds Book 55344 Page 172 and is free of encumbrances. Property is located in Residential A Zone.**

a. **CONTINUED PER APPLICANT REQUEST TO JANUARY 23, 2019 MEETING DATE**
 *see Motion under Public Hearing #2

Continued from November 14, 2018, PH opened on 9/12/18

2. **FY19-04 Exportation Application Exportation Application - The owner and applicant of record, ARIS Group, LLC/Odisefs Tsimogiannis, is seeking approval of an Exportation Permit to perform earthwork with project design results/volume estimate to be 621,381 cubic yards of cut, 35,640 cubic yards of fill with a net result of 585,741 cubic yards of cut. Property is located on 0 Old Elmdale Road, Uxbridge, MA. The property is shown on the Town of Uxbridge Assessor's Map 25, Parcel 3979. The title to said land is recorded in the Worcester District Registry of Deeds Book 55344 Page 172. Property is located in Residential A Zone.**

a. **CONTINUED PER APPLICANT REQUEST TO JANUARY 23, 2019 MEETING DATE**

***MOTION I: to continue public hearings items 1 & 2 to January 23rd made by Mr. Desruisseaux. Motion was seconded by Mr. Leonardo. Motion carried 5-0-0.**

Continued from November 14, 2018, PH opened on 10/24/18

3. **FY19-08, Special Permit Application - The Owners and applicants of record, TDJ Materials, LLC and Gerald A. & Mary L. Lemire, are seeking a SPECIAL PERMIT to construct self-storage units totaling 102,000± square feet within the Waucantuck Adaptive Reuse Overlay District. Property is located on 300 Mendon Street, Uxbridge, MA. The property is shown on the Town of Uxbridge Assessor's Map 19, Parcels 2413, 2467, & 2475. The title to said land is recorded in the Worcester**



PLANNING BOARD MEETING MINUTES December 19, 2018 continued

District Registry of Deeds Books 46744, 49951, & 45280 Pages 1217, 357, and 83. Property is located in Residential B Zone.

- a. 11/30/18 Revised Site Plan
- b. Town Counsel's

Representing the applicant, Mr. Stephen O'Connell of Andrews Engineering stated he had reviewed comments from Graves Engineering. The Board reviewed the revised Plans and the comments from Graves. Mr. O'Connell stated he would accept conditions of approval requiring that building elevations be submitted to the Board prior to construction, deferring to the PB on the landscaping plan, and showing the extent of demolition. Mr. O'Connell, in regards to engineering review comment #31 by Graves Engineering dated 12/19/18, stated the Town does not have standards for drainage castings and also that it would be on private property.

Also discussed was the zoning bylaw issue. Mr. O'Connell stated that while the map and parcel references were incorrect, the metes and bounds descriptions were accurate and superseded the map and parcel references.

The Town Planner, Mr. Gallerani, stated that he spoken with Town Counsel. The Vice-Chairman indicated that he would prefer direct written comments from Counsel for their legal references to ensure the full comments were received by the Board.. Mr. O'Connell questioned what information was submitted to Town Counsel and what questions were submitted. Mr. Gallerani stated that he had reviewed what was submitted to the Attorney General and confirmed with the Town Clerk. Mr. Desruisseaux stated again, he would like to see things in writing. The Board later discussed whether or not to revise the language of the bylaw in the future.

On behalf of the applicant, Attorney Rob Knapik addressed the Board. He submitted copies of the Warrant Article, an exhibit shown on the screen at Town Meeting, and Town Meeting Minutes. He reviewed the 2016 F.A.T.M. (Fall Annual Town Meeting) Article for the enlargement Waucantak Mill Reuse Overlay District. He also stated that the graphic was shown at Town Meeting to make clear to the voters what was being voted on. He reviewed the Town Meeting Minutes and the amendment made on the floor to include the metes and bounds. The amended Motion passed.

He reviewed the *defects* highlighted by Mr. Gallerani and stated that they were not true defects that would render the bylaw defective. He said many of them were stylistic and typographic and not truly defective. He stated that that even if a Court reviewed and agreed that there was some ambiguity with the map and parcel reference, the Court would conclude, applying the usual rules of construction, that the more detailed description of the parcel (metes and bounds) would overrule the general (map and parcel). He further stated that what follows (metes and bounds) supercedes what came before (map and parcel). Also mentioned was the legal time limit, 90-days, to raise defects in the bylaw. He stated that it would neither be fair nor legal for the Town to say the bylaw was defective and to require the applicant to fix it in order to utilize it.

Attorney Knapik concluded his argument by saying that based on the Town Meeting information presented, the bylaw is valid and the Planning Board must act on it as such until and unless somebody challenges it. He further stated that if the Planning Board approved the project that it would not be depriving the Town of anything as the Town still would have the option to appeal the approval of the project based on the invalidity of the bylaw. Attorney Knapik gave the Board his legal opinion that the Board was bound to apply the bylaw as written under the presumption that it was properly adopted. The Board and Planner discussed the well defined metes and bounds, the amendment to the bylaw made on the floor of Town Meeting, Attorney Knapik's assertions, and the Minutes of the Meeting, as well as the actual written bylaw with the incorrect map and parcels.

The Chair opened the floor to the public. One abutter cautioned that the bylaws, that the Town passes and acts on, should be legally accurate to avoid lawsuits. Mr. Leonardo acknowledged the abutter's concern but also stated he felt, in this case, the metes and bounds accurately described the properties. He underscored the abutter's concern regarding Town lawsuits, which he stated could occur whether a project is approved or not approved; the Town could still be sued by whichever party was unhappy with the Board's decision.



PLANNING BOARD MEETING MINUTES
December 19, 2018 continued

Mr. O'Connell reviewed his notes and discussion was had with the Board in respect to conditions of approval: architecture, historic-looking signage, elevations, and Graves engineering's review comments. Mr. Smith stated he would still like to have something from Town Counsel in writing. The Board discussed making Town Counsel aware of the argument regarding the metes and bounds overruling the map and parcel references. The Board wanted the actual exhibit map included with the question to Town Counsel. Also stated was that the Chair wanted to be copied on emails submitted to Town Counsel on behalf of the Board as well as Town Counsel's response. Attorney Knapik informed the Board that he had sent Town Counsel copies of everything that he had submitted to the Board.

MOTION I: to close the public hearing made by Mr. Laverdiere. Motion was seconded by Mr. Hauck. Motion carried 5-0-0.

4. **FY19-12, Special Permit/Retreat Lot** – The owners/applicants of record, **Denis J. Dorr & Frances L. Dorr**, are seeking approval for a **Special Permit** to construct a single-family dwelling pursuant to Uxbridge Zoning Bylaws Section 400-32 – Retreat Lots. Property is located on **175 Hartford Ave West**. The property is shown on the Town of Uxbridge Assessor's Map 11, Parcel 3736. The title to said land is recorded in the Worcester District Registry of Deeds Book 59552, Page 36. Property is located in Residence-C zone.

Representing the applicant, Byron Andrews of Andrews Survey & Engineering, addressed the Board. He stated that there was a Plan approved in November creating two lots and one parcel of remaining land labeled as "*not a separate buildable lot without further action by the Planning Board*." He said the current application, before the Board, was for a Retreat Lot on that parcel.

Mr. Andrews described the property as having 3.09 acres. He added that zoning in that area required a Lot to be 1 acre and that this property had 3x the amount required and a minimum width of 47.6', conforming to the Retreat Lot Bylaw.

The Chair opened the floor to the public. One abutter expressed concerns regarding stormwater and flooding issues due to development in the area. He asked about drilling and blasting, due to it being mostly granite in that area, as well as future development in the area. The Board explained they could only address the application before them.

Several abutters reviewed the site plan.

A second abutter expressed concerns about stormwater and flooding issues, remarking that they had already being experiencing problems.

The Board discussed the Retreat Lot Bylaw and subdivisions with abutters.

MOTION I: to close the public hearing made by Mr. Desruisseaux. Motion was seconded by Mr. Laverdiere. Motion carried 5-0-0.

MOTION II: to grant the Special Permit for the division of land for 175 Hartford Ave West for Denis and Frances Dorr made by Mr. Desruisseaux. "So moved" said by Mr. Hauck. The Board voted 5-0-0.

The Chair called a 5 minute recess.

5. **FY19-13, Special Permit/Retreat Lot** – The owner, **Cynthia LaFrance** & applicant of record, **Ron Parsons** are seeking approval for a **Special Permit** to construct a single-family dwelling pursuant to Uxbridge Zoning Bylaws Section 400-32 – Retreat Lots. Properties are located on **125 Stanphyl Road and 619 West Street**. The property is shown on the Town of Uxbridge Assessor's Maps 32 & 37, Parcels 3087 & 852. The title to said land is recorded in the Worcester District Registry of Deeds Books 44412 & 38891, Pages 370 & 177. Property is located in an Agricultural zoning district.
- a. Town Counsel's comments

Representing the applicant, Byron Andrews of Andrews Engineering, provided a description of the property to the Board and stated his client would like to attach the long narrow piece of land on West



**PLANNING BOARD MEETING MINUTES
December 19, 2018 continued**

Street to the rest of the Lot and on the other side of the property, at the end of Stanphyl Road, separate out a buildable Lot which would have a small utility easement for existing utilities that service the garage in back. He stated the garage in back would be a Retreat Lot with 13.9 acres and his client wanted to build a house in the vicinity of the existing garage and install a driveway from West Street to the house. He stated it was a railroad bed, already graded out and graveled, and it would just have to be improved.

The Board brought up concerns regarding the driveway going through an easement, possible infrastructure in the driveway area, conservation/wetlands. The Board reviewed the site plan.

The Chair opened the floor to the public.

One abutter stated that of the 127' of frontage, 100' of it was the railroad bed. He stated the drainage ditch had infrastructure in there that diverts the water behind his land. He expressed his concerns regarding what would happen to the wetlands and with stormwater. He stated the property development had been denied in the past due to not being allowed to improve upon the sunken railroad bed which was filled with water.

He stated the applicant was running a business in the larger garage on the back part of the property, and currently resides at the house on the other lot.

He expressed concerns, since there is no Town water nor sewer, how the development of the property would affect his water and sewer.

Also mentioned was that the property was a rare wildlife habitat.

The Board reviewed the Retreat Lot Bylaw and discussed access to the property.

Mr. Andrews stated the applicant owns the old railroad bed. He stated he would bring the Mylar with the updates on it to the next meeting. The Chair stated that before a building permit could issue, a driveway would have to be constructed. Also stated, was that it was on the applicant to be in compliance with Conservation, Building, etc.

MOTION I: to continue to January 9th made by Mr. Desruisseaux. Motion was seconded by Mr. Leonardo. Motion carried 5-0-0.

IV. BUSINESS

1. **Quaker St -passed over. Applicant's attorney stated the applicant would apply for a Special Permit Modification to address the conflict between the PB's previous decision language/condition of approval and the granting of the ZBA Variance.**
 - a. Town Counsel's comments
 - b. Discussion regarding ZBA Variance granted and existing PB decision/Special Permit Conditions
2. **FY19-14, Stanphyl Road & West Street -ANR –passed over; Mr. Andrews stated he would provide an extension of time in which to act. (ANR deadline: 21 days from application submission)**
3. **Calvary Crossing**
 - a. Performance bond release

The Board reviewed the Bond amount provided by the Treasurer's office current to November 30, 2018. Discussion was had and it was decided not to specify the amount as it could change between the current date and the date of the release of the bond.

MOTION I: to release the Bond to the developer for Calvary Crossing made by Mr. Desruisseaux. Motion was seconded by Mr. Hauck. Motion carried 5-0-0.



PLANNING BOARD MEETING MINUTES
December 19, 2018 continued

The Board reviewed the balance sheet. All invoices were paid and the Board acknowledged that the Town had accepted the Road at the last Town Meeting.

b. 53G Engineering review deposit release

MOTION I: to release the engineering review deposit in the sum of \$1,999.75 to the developer of Calvary Crossing made by Mr. Desruisseaux. Motion was seconded by Mr. Hauck. Motion carried 5-0-0.

4. Eber Taft -passed over; no one was present to speak to the Board.
a. Informal discussion

5. Annual Planning Board Report
a. Review/Revise/Approve

The Board reviewed and signed the Annual Report.

V. MINUTES/MAIL/INVOICES

1. 11/14/18 Meeting Minutes

MOTION I: to approve the Minutes of Wednesday November 14, 2018 made by Mr. Leonardo. Motion was seconded by Mr. Laverdiere. Motion carried 4-0-1. Mr. Desruisseaux abstained.

2. Invoices (over \$600) -The Board reviewed the invoices. The Chair signed/authorized payment.

VI. ADJOURNMENT: NEXT PLANNING BOARD MEETING, WEDNESDAY, January 9, 2019
NO MEETING ON DECEMBER 26TH.


MOTION I: to adjourn made by Mr. Desruisseaux. Motion was seconded by Mr. Leonardo. Motion carried 5-0-0.

The Meeting was adjourned at approximately 9:10 p.m.

Planning Board Signatures


James Smith, Chairman

Joseph Leonardo, Member


Barry Desruisseaux, Vice-Chair


Barry Hauck, Member


Eli Laverdiere, Clerk

1-9-19
Date