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Approved:
Town Clerk:

TOWN OF BURLINGTON, MA
PLANNING BOARD MINUTES
MARCH 2, 2023

Board Members Present: Chairman Brenda Rappaport; Vice Chairman Barbara G. L'Heureux; Clerk William Gaffney; Ernest E. Covino (attending remotely); Joseph A. Impemba; Jessica Sutherland (attending remotely); and Toni Ann Natola

Board Members Absent: None

Staff Members Present: Elizabeth Bonventre, Planning Director, and Caleb Zimmerman, Assistant Planner

1. Call the Meeting of the Planning Board to Order

MOTION – Vice Chairman L'Heureux made a motion to call to order the Planning Board Meeting of March 2, 2023. The motion was voted 6-0-0. On a roll call vote: Chairman Rappaport voted yes, Vice Chairman L'Heureux voted yes, Member Covino voted yes, Member Impemba voted yes, Member Sutherland voted yes, and Member Natola voted yes.

Chairman Rappaport called the meeting to order at 6:35 PM. The Town of Burlington will be holding the March 2, 2023 meeting of the Planning Board as a hybrid meeting due to the current State of emergency due to the Covid-19 virus. As such, the Governor issued an executive order on March 12, 2020 authorizing remote meetings under G.L c. 30A Section 20 and extended by Chapter 22 of the Acts of 2022, including permitting remote meetings and participation, until March 31, 2023.

Ms. Bonventre stated that the option for remote participation via WebEx is being provided as a courtesy to the public. The public can join the meeting via the WebEx link posted on the Town's website, or they can call in by dialing 617-315-0704. The meeting is being broadcast live on BCAT, and on cable networks and residents can email questions to Planning@burlington.org or on Facebook live.

Chairman Rappaport stated that I would like to remind everyone of a set of rules governing public participation at this and at all subsequent meetings approved at the meeting of February 2, 2023. The Planning Board welcomes public participation at its meetings under the following conditions:

1. Public participation on matters that are on our agenda are allowed at the time of the board's discussion on the matter. The Chair will call for comments for the public at the appropriate time. Commenters must wait to be recognized by the Chair. Each participant will be allotted two (2) minutes to speak and must restrict comments to the agenda item being discussed.
2. There will be time at the beginning of each meeting that is set aside for public comment on matters not on the current agenda. The Chair will call for comments from the public at the appropriate time. Commenters must wait to be recognized by the Chair. Each participant will be allotted 2 minutes to



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speak and must restrict comments to matters which are under the jurisdiction of the board. Planning Board jurisdiction includes the following:

- a. Long-Range Planning Efforts
 - b. Parcel Rezoning Applications
 - c. Special Permit Applications
 - d. Insignificant Change Applications
 - e. Zoning Bylaw Changes
 - f. Site Plan Applications
 - g. Minor Engineering Change Applications
 - h. Preliminary and Definitive Subdivision Applications
3. Public participation must be conducted in a respectful, professional manner. Threats, incitement to imminent lawless conduct, obscenities, personal attacks, defamatory statements, and sexually explicit statements will not be tolerated.

Clerk Gaffney arrived at the Planning Board Meeting at 6:37 PM.

Vice Chairman L'Heureux stated that at the previous Planning Board Meeting when I was chairing in Chairman Rappaport's absence, I was asked a question by someone during Citizen's Time regarding if there is a complaint procedure that one can follow if they wish to file a complaint with the Town against the Planning Board. Town Counsel explained that there is no formal process to file a complaint against an elected board with the Town, and the remedy for someone who is dissatisfied is at the ballot box.

2. Public Participation Time

Sunil Prajapati of 3 Forbes Avenue – Mr. Prajapati stated that I am here tonight because I had the opportunity to work with the Board, and I observed many opportunities to improve how the Board works. Chairman Rappaport replied that if this is a matter of how we're conducting our business, this is not a matter that we're going to be taking our time. We've explicitly explained on numerous occasions that we are only taking Public Participation Time to discuss things that include applications, subdivisions, efforts, etc. We have heard and received several notifications from you regarding how you feel we conduct our business and, while we appreciate your opinion, Vice Chairman L'Heureux has stated that if you do not like the way that we conduct our business you can meet us at the ballot box. If you have a complaint against the Board, both Chairman Priest of the Select Board and myself as well as Town Counsel have said that you're well within your right to remedy this in a legal fashion. This is not a matter that we're going to continue to conduct business during our time, because our time is valuable just as yours is and so I would appreciate it if you would kindly step down. Mr. Prajapati replied that the Board just took the oath about promoting liberty and justice. Chairman Rappaport replied that this is not the venue to discuss liberty and justice, rather, this is the venue to discuss Planning Board matters. We have gone through several interactions, Mr. Prajapati and I respectfully disagree that this is the venue and so I'm kindly asking you to step down so that we can continue our meeting.



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3. Announcements

Ms. Bonventre read the announcements. It was the 224th Birthday for Burlington (founded on February 28, 1799) and there was discussion from the Select Board regarding a larger celebration for next year's milestone. The Zoning Bylaw Review Committee Sign Subcommittee will meet on March 6, 2023 at 5:30 PM via Zoom. The Sculpture Park Subcommittee will meet on March 8, 2023 at 8:30 AM via Webex. The Conservation Commission will meet on March 9, 2023 at 6:30 PM at the Town Hall Main Hearing Room and via Webex.

4. Legal Notices of Interest

There were no legal notices.

5. Non-Approvals

There were no non-approvals.

6. Administrative Matters

There were no administrative matters.

7. Matters of Appointment

7.a Public Hearing - Application for Approval of a Special Permit pursuant to 4.2.6.10 "Restaurants" of the Zoning Bylaws – 154 Cambridge Street – Goodnight Johnny's, American Music Bar, LLC, Applicant

Attorney Mark Vaughn of Riemer & Braunstein; Architect Mark Yanowitz; John Tebow (attending remotely); and Steve Duffy appeared for the application.

Attorney Vaughn stated that this application is for a special permit for a restaurant (a requirement within the Zoning District) to be located at the Shoppes at Simonds Park. It's envisioned to be a family-style restaurant with a live music component, but the intention is to appeal to the residents of Burlington.

Mr. Tebow stated that I've spent the last five years looking for a location for a restaurant that will have a live entertainment component to it. My team and I did an inventory of restaurants in Burlington, and we came to the conclusion that while there's a lot of high-end steakhouses, Italian restaurants, and Asian Bistro restaurants, we really couldn't find a restaurant that catered to the family community of Burlington. Our menu is going to feature American comfort food (i.e., meatloaf, baked fish, and prime rib), and we're hoping to open by December 1, 2023.

Attorney Vaughn stated that the hours of operation would be Tuesdays – Saturdays from 11 AM to 11 PM, and Sundays from 8 AM to 3 PM (closed on Mondays). There's a combination of interior and exterior seating, and the music component is all internal to the restaurant (nothing outside on the patio). This will be the only tenant in that area that will be open during the evening hours, so I think it's a good complementary arrangement with the surrounding businesses that operate during the day.



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Mr. Yanowitz stated that the types of music to be played include blues, jazz, country, and possibly a karaoke night. Mr. Tebow added that this is going to be background music while people are dining, and it will be at a low decibel level so that people can have conversations during dinner time.

Vice Chairman L'Heureux stated that after they're established the owners might want to reach out to The Real School of Music to give students some opportunities to perform. Vice Chairman L'Heureux then asked what day(s) of the week the live music will be played. Mr. Tebow replied that it will be Friday and Saturday nights. We've already reached out to the Berklee College of Music to bring in students as a potential venue for them.

Chairman Rappaport asked whether you have given any thought about a brunch menu and will there be a children's menu. Mr. Tebow replied that there will be a children's menu, but are still working on a brunch menu. Chairman Rappaport inquired about employee parking. Ms. Bonventre replied that we usually do a standard condition in the permit that you have an employee parking plan so that employees aren't parking close to the door so that it doesn't become an issue, as well as the restaurant providing someone to walk an employee to their car for safety reasons if they're parked far away at night. Chairman Rappaport then asked if the patio will be open during the cooler seasons. Mr. Tebow replied that outside seating will be seasonal only.

Chairman Rappaport then asked if there was any thought about noise control and wanted to confirm that the live music will be indoors only and not outdoors. Attorney Vaughn replied that everything is enclosed within the building where music will not emanate out. We're not looking to have any live entertainment on the patio.

Clerk Gaffney asked how many dumpsters are you planning for and what kind of fence are you looking to put around that. Mr. Yanowitz replied that there is a built-in dumpster enclosure that can house two large dumpsters and it's directly adjacent to the restaurant itself. The dumpsters are conveniently located so that people don't have to walk across the parking lot. There's no roof on that section of the building and so it naturally vents.

Member Impemba commented that this is exactly what we've envisioned for that downtown, and it looks like a great addition to the town.

Member Sutherland asked if they were planning on having changing tables in the men's restroom. Mr. Yanowitz replied yes, there will be changing tables for both men's and women's restrooms.

Ms. Bonventre asked if the applicant had a chance to review the Board of Health's comments. Attorney Vaughn replied that it was just a comment regarding the grease trap capacity and how that relates to the seating. If we have to reduce the seat capacity, that's fine with us.

Vice Chairman L'Heureux stated that temporary signs are not allowed, especially right here in the Town Center. You will have signage that's approved by the Board of Appeals, but temporary signs of any nature are not allowed (i.e., flag signs).



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Bruce Morey, Town Meeting Member, Precinct No. 1 – Mr. Morey stated that we’ve struggled to fill the Shoppes at Simonds Park for a long time, and this is a great opportunity to bring in a local non-chain establishment into this underutilized area here in Burlington.

Sunil Prajapati of 3 Forbes Avenue – Mr. Prajapati asked if there is overflow parking will you use some of the side streets because my house is an abutter to this property. Attorney Vaughn replied that we are not anticipating any issue with regard to parking since most of the tenants are not open during evening hours or weekends. Mr. Prajapati suggested that the Planning Board put signs on the street that says, “no parking.” Member Impemba replied that it wouldn’t be up to us, rather the Select Board, but I suspect that if there was going to be overflow parking it would probably take place on Center Street. Mr. Prajapati then stated that I hope that the Planning Board will not delay your application because my experience hasn’t been good with the Planning Board. Chairman Rappaport replied that this is not appropriate and borderline harassment. Chairman Rappaport then asked Mr. Prajapati to step down.

Rick Parker, President at Burlington Area Chamber of Commerce – Mr. Parker stated that we’ve heard a lot about what residents did and didn’t want. What they did want was something that was affordable, family friendly, and something that would add to the culture. I think this would be a great addition and it's going to help to bring the walkability to that area that those small businesses really depend on.

MOTION – Vice Chairman L’Heureux made a motion to close the public hearing on this matter. The motion was seconded by Clerk Gaffney and voted 7-0-0. On a roll call vote: Chairman Rappaport voted yes, Vice Chairman L’Heureux voted yes, Clerk Gaffney voted yes, Member Covino voted yes, Member Impemba voted yes, Member Sutherland voted yes, and Member Natola voted yes.

MOTION – Vice Chairman L’Heureux made a motion to approve the request of Goodnight Johnny’s for a Special Permit pursuant 4.2.6.10 “Restaurants” of the Burlington Zoning Bylaw for property located at 154 Cambridge Street subject to the terms and conditions in exhibit “A” attached. The motion was seconded by Clerk Gaffney and voted 7-0-0. On a roll call vote: Chairman Rappaport voted yes, Vice Chairman L’Heureux voted yes, Clerk Gaffney voted yes, Member Covino voted yes, Member Impemba voted yes, Member Sutherland voted yes, and Member Natola voted yes.

MOTION – Vice Chairman L’Heureux made a motion to take items “7.b,” through “7.e” together for discussion purposes. The motion was seconded by Clerk Gaffney and voted 7-0-0. On a roll call vote: Chairman Rappaport voted yes, Vice Chairman L’Heureux voted yes, Clerk Gaffney voted yes, Member Covino voted yes, Member Impemba voted yes, Member Sutherland voted yes, and Member Natola voted yes.

7.b Public Hearing - Application for Approval of a Special Permit pursuant to 4.2.7.1 “Light manufacturing or processing plants, prototype manufacturing” of the Zoning Bylaws – 6-8 Adams Street – 21st Century Concrete, Inc., Applicant



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7.c Public Hearing - Application for Approval of a Special Permit pursuant to 4.2.7.9 “Hazardous and toxic materials/chemicals use storage, transport, disposal or discharge” of the Zoning Bylaws – 6-8 Adams Street – 21st Century Concrete, Inc., Applicant

7.d Public Hearing - Application for Approval of a Special Permit pursuant to 6.1.1 “Nonconforming Uses” of the Zoning Bylaws – 6-8 Adams Street – 21st Century Concrete, Inc., Applicant

7.e Public Hearing - Application for Approval of a Special Permit pursuant to 6.1.2 “Nonconforming Structures and Premises” of the Zoning Bylaws – 6-8 Adams Street – 21st Century Concrete, Inc., Applicant

Attorney Thomas Murphy; Maria Clemente of 21st Century Concrete, Inc.; W. Minot Wood, Engineer; and Mary Trudeau, Wetlands Consultant, appeared for the application.

Attorney Murphy stated that at the last meeting we were asked to provide a dust plan, which we’ve done, and we also discussed conditions regarding some enhancements to landscaping and potentially an easement. My client has agreed to remove old concrete blocks that were along the side of the road. We’re also going to need a police detail because it's a narrow roadway. The proposed decision is almost verbatim from the 2006 decision, which was a very well researched and documented decision by this Board, and we’re more than happy to continue to operate under those conditions.

Ms. Bonventre stated that I’m going to do some research on the police detail and reminded the Board that there is a clause in the new permit that all previous conditions will remain in place.

Member Impemba stated that we had a whole contingent of people here from Lexington here from the previous meeting and it sounds like their concerns have been addressed. Chairman Rappaport replied that it is my understanding that they have been addressed as much as we can address them.

Member Covino stated that if the special permit had been issued for the use and not directly to the owner, we wouldn't even be doing this. This is basically just a change of ownership, and I was involved in the original permitting where we spent a lot of time (6-8 months). On a site visit to one of their other plants, the cement was encased in a closed container and there were no piles of cement lying around to create silica dust. I'm very comfortable in voting to allow a new owner to take over especially since the same people are going to be involved in running the operation.

Mehul Mehta of 5 Granger Pond Way, Lexington, MA – Mr. Mehta stated that I fully understand that this is a continuation, but that is not the issue that we are bringing up. You already talked about cleaning up Adams Street and making it aesthetically better, but if you come to our side (in Lexington) and I have photographs at this time of the year when there are no leaves on the trees, you get a straight view of the gravel pile, and when the snow is not present there’s no obstruction of the dust coming through. There’s also a lot of trash on the side of Vine Brook. It was my assumption that Vine Brook bisected the two communities, but if it turns out to be Lexington’s trash, I will take it up with the Town of Lexington because it is unsightly. I urge you to



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look at mitigation measures to make it easier for us both aesthetically and also from the dust perspective. Lastly, Mr. Mehta stated that there's a whole ecological system there of wildlife and asked if there is something we can do together. I've already talked to my neighbors to do some environmental stewardship, and I am open to have a forum to have a regular discussion with the new owners. Chairman Rappaport replied that having some type of forum / committee to preserve the environment surrounding the site is going to impede this decision whether or not that is formed, but I would support it. If down the line there is something new that needs to be addressed (i.e., a type of medical impact) there will be discussion, but at this point in time we can't tell the proponent that they can't continue to conduct a business that's been there for quite some time.

MOTION – Vice Chairman L'Heureux made a motion to close the public hearing on these matters. The motion was seconded by Clerk Gaffney and voted 7-0-0. On a roll call vote: Chairman Rappaport voted yes, Vice Chairman L'Heureux voted yes, Clerk Gaffney voted yes, Member Covino voted yes, Member Impemba voted yes, Member Sutherland voted yes, and Member Natola voted yes.

MOTION – Vice Chairman L'Heureux made a motion to approve the request of 21 st Century Concrete, Inc. for a Special Permit pursuant to Sections 4.2.7.1 “Light manufacturing and processing plants,” and 4.2.7.9 “Hazardous materials/chemicals use, storage, transport, discharge...” of the Burlington Zoning Bylaw for property located at 6-8 Adams Street subject to the terms and conditions in exhibit “B” attached. The motion was seconded by Clerk Gaffney and voted 7-0-0. On a roll call vote: Chairman Rappaport voted yes, Vice Chairman L'Heureux voted yes, Clerk Gaffney voted yes, Member Covino voted yes, Member Impemba voted yes, Member Sutherland voted yes, and Member Natola voted yes.

8. Minutes

MOTION – Vice Chairman L'Heureux made a motion to approve the Planning Board minutes of December 1, 2022; and January 5, 2023. The motion was seconded by Clerk Gaffney and voted 6-0-1. On a roll call vote: Chairman Rappaport voted yes, Vice Chairman L'Heureux voted yes, Clerk Gaffney voted yes, Member Covino abstained from voting, Member Impemba voted yes, Member Sutherland voted yes, and Member Natola voted yes.

MOTION – Vice Chairman L'Heureux made a motion to approve the Planning Board minutes of January 19, 2023. The motion was seconded by Clerk Gaffney and voted 6-0-1. On a roll call vote: Chairman Rappaport voted yes, Vice Chairman L'Heureux abstained from voting, Clerk Gaffney voted yes, Member Covino voted yes, Member Impemba voted yes, Member Sutherland voted yes, and Member Natola voted yes.

9. Other Matters

9.a Discussion

Land Use Committee Planning Board liaison:

Ms. Bonventre stated that I attended the Land Use Committee on Monday to give them an overview of the



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law regarding MBTA communities. I did get a question from their Chairman as to who the liaison to the Planning Board for the Land Use Committee is right now. Chairman Rappaport replied that we will discuss this offline.

MBTA Communities Subcommittee meeting and update:

There will be a discussion offline to schedule the Subcommittee meeting.

Burlington.org email addresses:

Chairman Rappaport announced that Board Members will need to sign a form regarding Burlington.org email addresses.

9.b Correspondence

There was no correspondence.

9.c Reports from Town Counsel

There were no reports from Town Counsel.

9.d Subcommittee Reports

There were no Subcommittee Reports.

9.e Unfinished Business

There was no unfinished business.

9.f New Business

Vice Chairman L'Heureux stated that the Burlington Sculpture Park Committee is intending to do some construction at the site this coming spring, which will entail formalizing the entrance and creating a paved pathway and bench.

Clerk Gaffney stated that there has been a lot of discussion at the Recreation Commission regarding pickleball issues with the neighbors there. They'd like to not only get it moved up as a temporary situation which will cost the town close to \$100,000 for a temporary move away from their houses, but they're always looking for us to see if there's an opportunity when folks come in for very large projects to have it on their site (i.e., similar to MITRE Fields). It's a very difficult situation because of the continuous noise with them. We don't really have another site, and one option from a former Board of Appeals Member is to just get rid of it all together.

Member Impemba expressed his condolences for longtime police officer Dick Sheppard who recently passed away.



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MOTION – Vice Chairman L’Heureux made a motion to adjourn the March 2, 2023 Planning Board Meeting at 7:38 PM. The motion was seconded by Clerk Gaffney and voted 7-0-0. On a roll call vote: Chairman Rappaport voted yes, Vice Chairman L’Heureux voted yes, Clerk Gaffney voted yes, Member Covino voted yes, Member Impemba voted yes, Member Sutherland voted yes, and Member Natola voted yes.

*Respectfully Submitted by Eric Bergeron,
Recording Clerk*