



PB

Approved
Kerri Rufo

BILLERICA PLANNING BOARD

Town Hall
365 Boston Road Billerica, MA 01821
978-671-0962
978-670-9448 Fax

Marlies Henderson, *Chair*

Michael Parker, *Vice Chair*
Christopher Tribou
Edward Giroux

Patricia Flemming, *Secretary*
Blake Robertson
Kelley Sardina

**Planning Board
Minutes**

January 10, 2023 @ 7:00 P.M.
Hybrid/Room 210
Videoed by BATV

Can be Viewed: <https://billerica.cablecast.tv/CablecastPublicSite/?channel=3>

RECEIVED
2023 MAR 13 A 9:13
TOWN CLERK
BILLERICA

Members	Present
Marlies Henderson, Chair	X
Michael Parker, Vice-Chair	X
Patricia Flemming, Secretary	X
Chris Tribou	X
Blake Robertson	X
Edward Giroux	X
Kelley Sardina	X

Other Attendees:

Erika Oliver Jerram-Director of Planning & Community Development
Katherine Malgieri-Senior Planner
Kerri Rufo

Pledge of Allegiance

Moment of silence for loved ones passed away over the Holidays

Public Comment

No public comments

Attendees:

Steve Lentine-Attorney
Steve Dresser-Engineer
Derek Roach-VAI - Traffic Engineer
Michael Colomba-Property Owner
Phil Paradise-BETA - Engineering Peer Review

Marlies Henderson-First item on the agenda is the continuation of the currently open public hearing for a Mixed-Use Special Permit for 279 Boston Road. At our last meeting there was a request from one of our board members to make this the first item; the project had been thoroughly vetted, extensively discussed, Mr. Lentine summarized the changes made, based on comments by the board and neighbors. The board went through each condition in a draft decision, but Board members requested a continuation to review the draft condition. The applicant agreed to extend the statutory period for a PB decision. Since last month, I received no comments, nor did the staff.

Public Comments:

Mike Rosa-I did send a legal opinion relative to the lot size and using the paper street as a lot and I don't think I got an answer. I know what Town Counsel said because I sent you that written document. I would think you would weigh more on town counsel than the representation from the proponent. I haven't seen the order of the conditions, but I hope that this board takes in consideration this being the very first project. I still feel that 21 units is too big for that site, and I don't feel they meet the conditions for the density bonuses. Doing things that are required by bylaw as a reason to give density bonuses then you are going to be setting the bar fairly low. I hope you take that into consideration as you go through your order of conditions. I hope that some of the conditions are done in perpetuity because if you don't then you have lost the reason for the density bonus. If they are going to get a density bonus, even though I don't think that they deserve it, it needs to make sure that the reasons are there forever, for as long as that building stands.

Marlies Henderson-As for the lot size, I think it was resolved. It will get brought to the Assessors and the Assessor will work with that.

Mike Rosa-Do you have a stamped drawing from a registered surveyor?

Marlies Henderson-Yes. And Senior Planner clarified that Town Counsel refers to the applicant's attorney.

Mike Rosa-They are using Bover Lane as part of that lot size. It was very clear from TC that you can not use a paper street to increase your lot size.

Stephen Lentine-It is 20 units. Even without the 4000sq ft that has no bearing on the number of units that can be built on the site.

Marlies Henderson-You mentioned something about what you felt it was too big, but we are not dealing with feelings but with the bylaw and according to the bylaw it meets. There are no extra variances.

Erika Oliver Jerram-The applicant is going to be required to comply with all the conditions. If they are not in compliance, they will deal with the building commissioner.

Mike Rosa-I would like to remind the board of Section 13 of our bylaws gives you the authority to overrule any part of the bylaw.

John Burrows-13:02-16:32 I was just wondering has this project received all the other approvals? Or anything from Conservation and BOH for filling in the flood plains or anything of that.

Marlies Henderson-I have a very happy letter from the Director of ConCom (Marlies continued to read the letter from the Director of Conservation)

Steve Lentine-We did get the order of condition from ConCom and that will go on record at the registry of deeds.

Steve Dresser-If I can add for the record there is no alteration to the flood plain

John Burrows-I thought you guys were going to elevate the front part of the parcel and bring it up 3 feet?

Steve Dresser-The parcel is not in the flood plain, the flood plain is in the bank

John Burrows-But if you go in the green flood plain which is considered wetlands, doesn't it run up halfway through the building.

Steve Dresser-What you are looking at is the buffer zones. It is a river front area, so we are within 100 feet of the riverfront which is a protected district and within 200 feet of the river front is protected distance. So, the lines you see on the plans are buffer zones. They are not resources areas per se they are not flood plain, they are not riverbank or wetlands

John Burrows-So from water's edge, not from edge of buffer zone

Steve Dresser-They are a distance from the water's edge but there is no actual activity within the flood plain itself

John Burrows-It is not a bad project, I will give you that. Any time that you have to change zoning to approve a project then you have to go get variance, it doesn't fit. So, I urge caution in this. You can shake your head all you want Erika you work for the Town, you are not a board member

Marlies Henderson-They did not need any variances

John Burrows-They did for Conservation.

Marlies Henderson-And they got it

Steve Dresser-The only variance we needed from conservations was to remove disturbances within the buffers

John Burrows- Marlies just said you didn't need a variance, so we needed zoning change and a variance

Marlies Henderson ...no variances for PB or ZBA ...

Steve Dresser-There is no zoning variance, it's a bylaw

John Burrows-We changed the whole bylaw because the thing sucked in the first place, and it sucks again.

Steve Dresser-It is a different project

John Burrows-It is much better than it originally was.

Marlies Henderson-Thank you Mr. Burrows

John Burrows-I don't get my 3 minutes Marlies? I will return the favor. You're a joke

Marlies Henderson-John you are being rude

End of Public Comments

Close Public Hearing 17:25

Marlies Henderson-I would like to entertain a motion to close the public hearing for the S3 mixed use public hearing

Seconded by Pat Flemming

All in favor

Chris Tribou- Aye

Mike Parker- Aye

Edward Giroux- Aye

Blake Robertson- Aye

Kelley Sardina- Aye

Pat Flemming- Aye

Marlies Henderson- Aye

Final Comments from the Board:

Ed Giroux-18:12-20:20-Some of you may remember that the town ran a Town Manager out of town because he stated an opinion on the "curb appeal" of the town. Sometimes the truth hurts, He wasn't completely wrong. In my opinion, this project is an important step in improving our curb appeal. I think we can all agree that there are far too many abandoned and dilapidated building along

our main road in town. 279 Boston Rd is one of them. The proposed building is a vast improvement in comparison to what is there now. The project provides some important improvements to the nearby environment and aesthetics. For example. A reduction in the impervious surface of about 6,200 SF. Improvements to storm water management at the site, bringing the site into compliance with the MA Stormwater Management regulations. Providing access to the river either at this site or providing funding for access at another. The building was redesigned to make it more attractive. Providing access to alternate forms of transportation including bicycles and safer, easier access to public transportation by moving the LRTA bus stop. Upgrades to natural vegetation. Most of you have been on this Board longer than I, so I don't need to inform you that our job as the Planning Board is to ensure that the proposal before us complies with our zoning bylaws. In my opinion, it does. There are no variances or waivers asked for or required. To the proponent, this is the first project under the mixed-use bylaw. It's very important to the town that you get it right. Please don't cut any corners. I wish you the best of luck and look forward to seeing this project through to completion. I started with curb appeal, so I'll just remind you that this is the start of improving the curb appeal that we all want for our town. I hope this project is successful and leads to further improvements along Boston Road. I will be voting to support this application.

Chris Tribou-20:20-27:01-I was on the Planning Board when the first zoning came through. That was recommended by the Planning Board in the Fall of 2016. The people that voted in favor of it Burrows, Santorum, DaSilva, Mahoney it was passed by 2/3rds at TM. It was contentious, it did have a lot of flaws. I was happy to vote in favor a better zoning that reduced height. People who came before the project before this had issues with density, parking minimums and those were concerns. It is down to the 20 units, they have addressed more with parking which is now 1.5. We have made adjustments and improvements. Having Mass DOT with a handicap accessible bus stop, having bikes for the residents and bike racks. To me those are improvements. The improvement to the site will be good for the Concord River. Not everyone will be happy no matter what the decision is. We try to get the best project that we can. The applicant has made modifications and they are acting in good faith.

Michael Parker-27:01-31:55-I think Ed made a nice summary of the project. I was a TMM that voted against the PUD. I was the resident that spoke out against on the previous project at 279. I voted no on this mixed-use development bylaw. As you can see it paints a tough position for me, however when I ran for elections this past April, I knew there would be tough decisions to be made and this will be one of them. The first pass, I didn't think you met the density bonus and we expressed that, and you came up with this idea of a bicycle room interior to the building with the bikes (which we need to add in perpetuity to our conditions)that is providing an alternate means of transportation to the resident. It is for the people at that site, and it might not be exactly in this book here but that in an interpretation that you guys have found a way to look outside the box and put it into your building and I like the idea. Is it do big? The bylaw says you can be so tall and so many floors, and you meet those parameters. Balance as Chris was mentioning, there is no definition for 50/50 that was voted down even if I voted yes for that because it would have made this building 2 stories. The balance here is, we have industrial, commercial, restaurant and you came done by 1 unit, it is only 20. Is it balanced, its not perfect but it is what it is. Parking is not perfect; I do hope that things work out in your favor that your restaurant is so busy that you have to have someone attending to parking to make sure that the residents have a

spot, which is my biggest concern. It is the first project, so as Ed mentions we need to treat it as that. We already have a situation that is not so friendly north of you on Boston Road and this one happens to be on our river and drinking water. Everything you can do to make sure runoff is not happening into that river because this room will be filled with people and the Selectboard so just do whatever you have to do to protect that river. You have checked all the boxes and I will support the project.

Pat Flemming-31:57-33:04-My main concern was the 3rd floor of the apartments, and it is gone now, and I am very happy with that. The way that you are going to fence off the side of the river. I was concerned about kids playing in the river. I am very pleased with all of that, and you are working with the town on this.

Blake Robertson-33:05-41:33-I do believe that we still have a number of items that are not resolved. I do appreciate the fact that we have the claim of the stamped plan. Do we have it and why is it not in our packets.

Erika Oliver Jerram-Yes, we have it. You can come to my office and come look at it.

Katherine Malgieri-At the last meeting it was resolved to have the draft condition that a stamped plan would be filed with the county and that a copy would be shared with the Assessor to make sure that they are taxed at that rate as well.

Blake Robertson-What we don't have is visibly to see what the exact number of the square footage is. Which is the root issue of this whole project, how many acres are we talking about. It would be nice to have that since it is the key point to the whole decision that we are making. I will come see it next time I am in the building. We have long standing planning guidance which calls for a minimum of curb cuts. That site has only 1 active entrance. It was asked a number of times why we need a second entrance, lots of discussion to minimize bad traffic going in and out. Who was it that asked for that 2nd entrance? We were told it was asked for by a town official, so who was it that asked for that.

Erika Oliver Jerram-The fire department. They need two means of egress for fire trucks to get around the site.

Marlies Henderson-And for safety they reduced buy taking out the left turns, right turns only and cobblestone

Blake Robertson-We did have discussion on that, that is correct. We are having considerable fill for the site that is being added by the river edge. My understanding that it is a no alteration zone. Whom am I supposed to trust that we are protecting the river and by that action is not pushing water from that site into the residents, the neighbors and they are not going to experience greater or flooding than they experienced in 2014 & 2009.

Marlie Henderson-The Conservation Commission, so we have to respect their authority

Blake Robertson-I acknowledge that they have some authority. There is not state oversight of rivers?

Marlies Henderson-ConCom has the authority, but they do get a DEP number. There is a state number and a Billerica number, and it went through the approval process.

Blake Robertson-Finally the fill in the back part of the lot. One foot over 10 feet so it is not a light slope. That is going to be pushing a lot of water from the site down to Boston Road, we are so concerned about the runoff of water quality going into the river how do we ensure that water does not go into the river.

Marlies Henderson-The stormwater is going to be improved, better than it is now

Blake Robertson-That is on the downhill side, this is on the front. It will be coming right down the driveway onto Boston Road

Steve Dresser-It comes in from a low point, it comes down from Boston Road before it goes in the catch basin. The runoff from the site (front) will empty in those catch basins. There will be a significant amount of reduction of runoff from the site.

Blake Robertson-It has revealed a number of deficiencies and problems with the mixed use bylaw. My assessment remains that this project does not meet the bonus criteria, it meets the standard design criteria, but it doesn't meet the bonus criteria. I agree with an earlier statement and that was if we had a project with only 13 or 14 units, this would be perfect. We would have plenty of space to take care of the issues, to provide more green space, potentially allow more asphalt removal. We are not there and that is too bad. My assessment is it does not meet the criteria. I look forward to a restaurant like yours coming into town, but I still think the project is still too large and we are facing the consequences with that, like parking, no room for anything else, no room for play area for kids and that is disappointing.

Kelley Sardina-41:35-53:42-One of the things is that it is supposed to be mixed use access to the river, and everybody is missing that. This is the only parcel that has access to the river, but we are not offering that, you are not offering that, but we are offering bicycles. You didn't want to do access to the river because of liability; bicycles aren't a liability, you are providing them, it is a liability. I feel if you want the bonus this is the only piece of property that has access to the river. Is this really where we want to give our bonus density. Mixed use bylaw it was put together and this property is actually our only one. So, they had to be thinking they wanted access to the river to meet that bonus density. You are not offering it, but you are offering bicycles.

Marlies Henderson-Mr. Colomba is actually offering a considerable amount of funding

Kelley Sardina-Somewhere else. It is not where you can paddle. People are going to want to sit by the river and they can't. It is one piece of property we are asking to give him a bonus density but our bylaws state that we are supposed to have access to the river, and we are not going to.

Marlies Henderson-They are close enough

Kelley Sardina- Close enough is not good enough Not even the people who will live in your building and nor will any resident. I mean Mike is giving bikes. What if one of the kids takes a bike and it is too big and he falls, you are liable. One piece of property in this mixed used and we have access to the river, and we are not going to use it. We are going to give it someplace else but not here. Then it says walkability, is it? Our laws through the planning (Kelley continues to read “Guidelines for SPSP)

Marlies Henderson-What are your notes about, I am trying to follow

Kelley Sardina-It is Guidelines for SPSP, these are our guidelines.

Marlies Henderson-But the peer review reviewed, the experts.

Kelley Sardina-Continued to read

Marlies Henderson-The Peer review have checked the project based on our bylaw. You are reading from the bylaw, and we don't need to read it during the meeting.

Kelley Sardina-I am sorry, the peer review was hired, we are elected. I am following the guidelines that are giving to me from our planning board

Marlies Henderson-So why do we hire?

Kelley Sardina-I don't know Marlies, but this is what we are elected to do. She Continued to read the guidelines for SPSP

Marlies Henderson-If you are just going to read the law, I am going to stop you.

Kelley Sardina-Because the law doesn't apply?

Marlies Henderson-The law has been discussed. It has been peer-reviewed.

Kelley Sardina-I don't care about the Peer review. I was elected to be here and not hired. Lets go to Phil.

Marlies Henderson-To Phil (BETA) Do you think our bylaw has been meet?

Phil Paradise-Yes, based on the applicable sections of the bylaw, we didn't find that it entwines

Kelley Sardina-I am not talking about the bylaw. I am talking about our guideline as a Planning Board. I am talking about what we are supposed to follow as a planning board. They are not being meet. The biggest argument on this property is and there has always been one entrance. Bridge St. has always been closed.

Marlies Henderson-Phil is there an issue with two entrances?

Phil Paradise-It is actually a preferred practice for emergency. They are limiting the Boston Road side to right in, right out and that is the best you can do. I will allow emergency vehicles to either enter or exit onto Boston Road.

Kelley Sardina-I have more items, I am sorry, I am just trying to do my due diligence.

Marlies Henderson-I think that you are getting in the weeds, and you are ignoring that we have staff. Mr. Lentine, could you please explain the acreage? You do not have the floor anymore

Kelley Sardina-So that we Chair? Sorry folks.

Steve Lentine- Regardless, whether you count the 4k sq ft or not we still have 20 units. It is 20 units either way.

Steve Dresser-I would like to point out that there is 400 sq ft of frontage on this property. The guideline that Kelley is referring to says 200 sq ft and we have over that, and it is a corner lot. The dock, the bylaw doesn't say that you don't have to do a dock, you can do a dock if it is feasible. The parking lot is 12 feet above the river. In order to get down to that it would have to be handicap accessible. So do go 12 ft a ramp it would have to be 144 ft long.

Marlies Henderson-If you read from the law I am not interested.

Kelley Sardina-Mixed use development says access to the river.

Marlies Henderson-If it is feasible.

Kelley Sardina-If it not feasible for a boat ramp, it can be feasible for steps

Steve Dresser-You would still need a 12 ft drop if you didn't have any type of ramp. It would be 240 foot long to have a handicap access.

Kelley Sardina-Maybe when they wrote this, they were protecting us and that is one property that doesn't get the bonus density.

Steve Dresser-Public access to the water is not part of the density section

Mike Parker-I know the document that Kelley is talking about is the "Guidelines" The guidelines that are on our planning page are not what the bylaws that were passed by TM that we have to adjudicate. These are our zoning bylaws, and we are adjudicating the 5.E.11 mixed used overlay zoning tonight. We have to adjudicate by these, these are what the proponent will use if we do not accept his project, they will use these against us not the guidelines

Marlies Henderson-55:03 I have felt it my duty as chair, to provide leadership, to be objective and ensure that all members get the respect they deserve; to engage each member and stakeholders in the deliberation process. That's my role, and it's also my privilege. As chair I'd like to summarize the process so far: We've heard the stakeholders. The peer review on our behalf deems the proposal legit and acceptable. Neighbors have weighed in, and the applicant has gone above and beyond to

address our and neighbor's concerns, to make his development the best it can be, basically, everything short of having to drop the project. Doing nothing might very well temporarily please a few residents, but in a sense, stagnation is not a win but a loss: We would miss out on increased pervious riverfront area, improved stormwater management (good for the water intake downstream) and improved public access to the river. Add to that the encouragement to ride bicycles and transit, reduce the global carbon footprint, and last but not least, reduce urban blight. Members of the board, I encourage you to focus on bylaw as approved by 2021 Spring Town Meeting Does the project comply. That is our authority, our jurisdiction.

MOTION TO APPROVE 57:00

Marlies Henderson- I'd like to entertain a motion to approve the mixed-use special permit (S-3) for 279 Boston Road, with conditions as mentioned.

Moved by Mike Parker

Seconded by Chris Tribou

Ed Giroux-Aye

Chris Tribou-Aye

Mike Parker- Aye

Pat Flemming-Aye

Blake Robertson- No

Kelley Sardina- No

Marlies Henderson- Aye

5-2 Approved

SPSP-331 TREBLE COVE ROAD-Continued-59:29

Marlies Henderson-The applicant has sent a notice to continue the meeting until February 13, 2023

Michael Parker-I make a motion to continue the SPSP 331 Treble Cove Road to February 13th

Seconded by Ed Giroux

All in Favor

SPSP-700 BOSTON ROAD-Motion Open to Continue 59:59

Marlies Henderson-The applicant has sent a notice to continue the meeting until February 13, 2023 I would I entertain a motion to open SPSP 700 Boston Road

Moved by Ed Giroux

Seconded by Mike Parker

All in favor

Michael Parker-I make a motion to continue the SPSP 700 Boston Road to February 13th

Seconded by Ed Giroux

All in Favor

MINUTES-NOVEMBER 14, 2022 1:01

November 14, 2022

Michal Parker-I make a motion to approve November 14, 2022, minutes

Seconded by Ed Giroux
All in favor

MINUTES-DECEMBER 12, 2022 1:02

Blake Robertson-There are some scrivener's errors

Michal Parker-I make a motion to approve December 12, 2022, minutes with the scrivener's errors corrected by Blake Robertson

Seconded by Ed Giroux
All in favor

HEARING REPORTS FROM COMMITTEE APPOINTEES 1:03

No update from boards members

Marlies Henderson-I would like to appoint Kelley Sardina to the Long-Range Master Plan. The committee has not convened since 2018.

STAFF UPDATES 1:06

Erika Oliver Jerram-We have drafted the MBTA Community Action Plan. We are reviewing it internally. It is due the end of January.

Marlies Henderson-Do we have to designate an area by January

Erika Oliver Jerram-No, what we are providing is informative, what is the action plan etc., etc. Save the date for January 30, we are having a meeting about the zoning audit. I will not be a public hearing it is a round table discussion. ZBRC & Planning will be meeting.

Sidewalk Discussion 1:10

Marlies Henderson-We should credit Blake Robertson for this discussion on sidewalks

Erika Oliver Jerram-Erika shared her screen and showed the board some slides. (see attached)

-The Default is to discuss adding sidewalks wherever we can. Why is that?

-The Planning Board is guided by the laws and policies of this Town and their best judgement.

-The Laws that apply for sidewalks:

Highly recommended in Mixed Use

Required in Subdivisions

-The Policies that apply include :

1. Planning Board Rules and Regulations for Site Plan review – in the Pedestrian Amenities section requiring “sidewalks and site walkways shall be provided across frontages and shall connect to nearby sidewalks if within 500 feet.

2. the Master Plan and the Open Space and Recreation Plan which both strongly encourage the accommodation of alternative modes of transportation, including walking, biking, etc.

3. The Town's Complete Streets Policy:

Our Complete Streets policy will focus on developing a connected integrated network that serves all road users. Complete Streets principles will be integrated into policies, planning, and design of all types of public and private projects, including new construction, reconstruction, rehabilitation of transportation facilities on roadways and redevelopment projects.

Implementation of the Complete Streets Policy will be carried out cooperatively between the appropriate departments within in the Town with multi-jurisdictional cooperation, as well as with private developers, and state, regional, and federal agencies, to the greatest extent possible. The Town recognizes that Complete Streets principles may be achieved through single elements incorporated into a particular

4. The Town's Roadway Management Plan and Capital Plans – managed by DPW

ADJOURNMENT

Michael Parker-I make a motion to adjourn

Seconded by Ed Giroux

All in favor