

SITE PLAN SPECIAL PERMIT STUDY COMMITTEE REPORT

In June, 2015, the Selectmen created a Standing Committee and charged the Committee as follows:

Site Plan Special Permit Study Committee

There shall be a Standing Committee to study the current process of commercial site plan reviews and approvals by the Board of Selectmen. The Committee shall consider the effect on the Town's overall planning process and whether that responsibility should be moved to the Planning Board.

The Committee shall consist of seven members, one representative appointed by the Board of Selectmen, one representative appointed by the Planning Board, one representative appointed by the Economic Development Committee, one representative appointed by the Design Review Board, one representative appointed by the Kelley's Corner Steering Committee, and two citizens at large. The Planning Department shall provide staff support as requested.

Our Committee met seven times, from October 7, 2015 to January 25, 2016 and included the following members:

Peter J. Berry – Selectman
Ann Chang – Economic Development Committee
Derrick Chin – Planning Board
Kim Montella – Design Review Board
J.D. Head – Kelley's Corner Steering Committee
Bill Alesbury – Citizen At Large
Roland Bartl and Kristen Guichard – Staff Support

Our Committee surveyed other Towns comparable to Acton to determine which Committees in those Towns are the granting authorities for special permits. The results of the surveys are attached. None have the Selectman review and approve Special Permits. Only one or two other towns in Mass. grant Special Permit approval authority to the BoS.

Ann Chang contacted former Acton officials to gather information about why the Selectmen were assigned responsibility under Acton's Zoning Bylaw as the Site Plan Special Permit Granting Authority for commercial developments. Ann's report is attached and details the reasoning behind that decision.

Our Committee also met with Andy Brockway to review the proposed Kelley's Corner Overlay District Zoning Bylaw amendments, particularly the proposed special permit granting authority.

RECOMMENDATIONS

Initially, our Committee has focused on the proposed changes to the Zoning Bylaw which would impose a new Kelley's Corner Overlay District. That proposal will be on the warrant for the 2016 ATM. For parcels in Kelley's Corner which exceed 50,000 sq. ft., a developer would have the option of proceeding through a Master Plan process rather than strictly conforming to the Zoning Bylaw's requirements. The Zoning Bylaw would still apply for developments less than 50,000 sq. ft. or for developers who control lots over 50,000 sq. ft. who do not chose to utilize the Master Plan process.

If a developer uses the Master Plan process under the Kelley's Corner Overlay District, the zoning amendment as currently proposed designates the Planning Board as the Special Permit Granting Authority. The Selectmen would still be responsible for Site Plan Special Permit review for any developments in Kelley's Corner which proceed under the current Zoning Bylaw.

Our Committee recommends as follows:

1. That the Board of Selectmen support the proposed Zoning Bylaw amendments for the Kelley's Corner Overlay District as presented, which designate the Planning Board as the Special Permit Granting Authority. Reasons for this recommendation include:
 - The proposed Master Plan involves a planning process based more on concepts, including conceptual building and site plan design, established through a collaborative discussion between the developer and the Town's planners, rather than traditional zoning. A developer is required to meet with and obtain the opinion of the Design Review Board. Although the DRB's opinion is still advisory, it is given more weight under the Master Plan process. The process is thus more dependent on professional planning/design expertise.
 - Given that the Master Plan process requires a minimum lot size of 50,000 sq. ft., there will be very few developments going through the process over the next 5-10 years. Although the K Mart site may propose a Master Plan for their property, our Committee feels that the Planning Board is best equipped to be the final permit granting authority under the Master Plan process.
2. That the Board of Selectmen authorize our Committee to continue our examination of the entire Special Permit granting authority process under the current Zoning Bylaw. Our Committee would meet with various stakeholders, continue to collect information about how other Towns review Special Permit applications, examine best practices and consider possible appropriate alternatives.
3. That the Board of Selectmen consider including funding in a future budget for a consultant to review the Town's current Zoning Bylaw and propose changes which would both modernize the Bylaw and simplify its procedures to make it more user friendly for both developers and the general public.

Minutes November 16, 2015

Site plan special permit study committee

Present: Peter Berry; Derrick Chin; Bill Alesbury; Kim Montella; Ann Chang and Kristen Guichard. Absent: JD Head.

Extra Information: reviews of assigned towns' processes of granting special permits for commercial developments; MAPC report on special permits

Peter questioned the need to expand the charge of the committee to include site plan review of the newly passed storm management bylaw. The review now stands with the selectmen.

Ann noted that this review involved complex issues that were far from the knowledge of the selectmen and suggested that the permits should be issued by the conservation commission instead.

Bill questioned the scope of the Kelley's corner area and the idea that those permits of large parcels would fall under a different board for the permitting while the smaller parcels would stay with the selectmen.

Peter suggested that our committee would be finished, with a report to the BoS, by the end of January and have a planning board hearing in February with a Kelley's Corner reporting March first.

Kristen, to answer the question of the availability of parcels of 50,000sq.ft. (which would be subject to the Kelley's corner bylaw) are in the process of being created. She noted that developers have plans but may not do the development all at once because of financing considerations. However, this bylaw would allow the town to look at the prospective developments as a whole. She noted that the planning department has more flexibility with regard to time limits, although they may be shorter than what is now allowed. She also noted that the plans would all go before the Design Review Board.

Kim wanted to know if the DRB could/would become, in the foreseeable future, anything more than an advisory board.

Peter explained for that to happen, the town would need to file a home rule petition to give the DRB a "legal" status. Such a petition would need to clearly spell out the duties and powers of the board.

Derrick asked about some housing on Rt. 111 and was told that they were affordable housing which is in a different overlay district. The discussion centered on the problems of the many different hoops a developer needs to go through before getting the needed information.

Peter explained that the reorganization of the land use side of town hall and the hiring of a land use/economic development person should help minimize the problems. In addition there was a new computer system which will also be of use.

Kim suggested that we copy the Concord site plan process. They have put their processes on their website.

The committee discussed the various reports from the assigned towns. It appears that the selectmen do not have site plan special permit in any of the towns. The planning board is elected in all, the towns except for the towns of Wilmington and Belmont. Many of the towns have the zoning board of appeals as the permit issuer.

The committee accepted minutes of October 7 and November 2: the only changes were to add the members who were absent.

Next meeting is November 30 when Andy Brockway, chair of Kelley's Corner committee, will visit.

Meetings after that: December 14th and January 11th

Assignments: read MAPC report on Special Permits; Ann write up history from Don Johnson; JD and Kim to send meeting minutes to Town Clerk

Adjourned at 8:35

Ann Chang

Chat with Don Johnson, former Town Manager

Don said that when the selectmen decided to take over the site plan review for commercial property, they were acting in what seemed the best interest of the town because the selectmen were an elected board and subject to closer scrutiny than the planning board.

At the time when the commercial site plan review and permitting went to the BoS, the planning board had many residential subdivisions to deal with.

There was also the feeling that the Selectmen could better control possible legal costs.

I would say that perhaps the major reason had to do with the fact that the planning board was an appointed body and not elected.

Speaking with a selectman who served on the board when they got the special permitting duties, the opinion was that a lack of work on the part of the planning board was not a sufficient or even a credible reason to change the process.

I also spoke with Garry Rhodes, former building commissioner who left Acton and went to work in Lexington.

He said the special permitting process worked when all the various entities did their job in a timely manner. By that he meant that all the reports that were needed for the permitting process were given to the BoS and the petitioner so they could review them prior to the public hearing. Many times this did not happen. In particular the petitioners seemed to not get the necessary information they needed to speak at the hearing. This resulted in continuances which are costly.

In Lexington many of the commercial site plan reviews are done by the Board of Appeals.

Concord MA Overview of Municipal Boards

Select Board (SB)(formerly Board of Selectmen): Meets on Monday evenings

5 members, elected. 3 yr staggered term

Responsible for:

Special Permits: N/A

Planning Board (PB): Meets every other Tuesday

7 members, appointed by SB, 5 yr staggered terms

Special Permits Require 2/3 vote

Responsible for:

Variation, modification, change, or extension of use of Zoning Bylaws: Reports to ZBA.

Investigates proposed amendments to Zoning Bylaws: At the direction of the SB

Subdivisions

Site plan reviews

Special permits:

Residential Compounds

Residential Cluster Developments

West Concord Interim Planning Overlay District

Common Driveways

Zoning Board of Appeals (ZBA): Meets once a month – Thursday

3 members, appointed by SB. Also 3 Associate members can step in when full member cannot.

3 year term, staggered

Responsible for :

Decisions, upon appeal, on Zoning, subdivision, sign, and Building code laws/bylaws

Is the Final Local Authority

Grants special permits not authorized for other boards

Special Permits:

Site Plans (Takes recommendations from PB)

Planned Residential Developments (PRDs) (Takes recommendations from PB)

Flood Plain Issues

Ground Water Protection Area Issues

Parking/Loading

Radio Towers/Wireless Communications

Garages (commercial/industrial)

Trailers/Mobile Homes

2 Family Homes

Combined Business/Residential Industrial Developments

Single- & two- family, non-conforming lots

Vacancies/Lack of Volunteers

Have not had lack of volunteers; only 1 vacancy now for ZBA Associate Member

Conflict/Competition

Not Reported

Winchester MA Overview of Municipal Boards

Board of Selectmen (BoS)

5 members, Elected

Special Permits: N/A

Planning Board (PB):

5 members, Elected

Responsible for:

Subdivisions

Drafting Zoning Bylaw Revisions

Planning Studies

Revising & Updating Master Plan

Makes Recommendations to ZBA

Zoning Board of Appeals (ZBA):

5 members, appointed by BoS. 1 Vacant Associate Position

Responsible for :

Special Permits

Variances from Zoning Requirements

Site Plan Approvals

Appeals for Zoning Enforcement Officer

Vacancies/Lack of Volunteers

Have not had lack of volunteers; only 1 vacancy now for ZBA Associate Member

Conflict/Competition

Not Reported

Prepared by Kim Montella 11/15/2015

From: [Peter J. Berry](#)
To: [Lisa Tomy](#)
Subject: Fwd: Hingham and Harvard
Date: Monday, February 08, 2016 8:14:05 AM

Peter J. Berry
39 Faulkner Hill Road
Acton, MA 01720
(508) 433-0467 (c)
(978) 264-0265 (h)
pjberry@comcast.net

----- Original Message -----

From: Ann Chang
To: Peter Berry
Sent: November 15, 2015 at 8:10 PM
Subject: Hingham and Harvard

Hingham
The planning board is elected
They do site plan for commercial in conjunction with the ZBA
It's the ZBA that does the voting, the planning board acts in an advisory position

The ZBA is appointed by the selectmen

There are no contested planning board races.

Harvard
Planning board is elected. There was not a contested race (two positions open, two people running)
It's the ZBA that issues the permits. The planning board acts in an advisory capacity,

The ZB A is appointed by the selectmen.

Sent from my iPad

MILTON

BOS: 3 members, elected. 3 yr staggered term each

Responsible for:

Special use permit: FILMING, among others

PB: 5 members, elected, 3 yr staggered term each

Responsible for:

Land subdivision

Site plan review

Special permit:

Cluster development

Attached cluster development

Condo conversion

Open Space development

Planned unit development

ZBA: 8 members, appointed by BOS

Grants special permits not authorized for other boards

Acts on:

Appeals

Zoning variances

Site plan/arch review

Modifications

Comprehensive 40B permits

Appeals of admin decision of Town's Zoning Code Administrator.

Vacancies/Lack of Volunteers

Have not had lack of volunteers.

Conflict/Competition

Smooth relationship between BOS and PB.

Recent disagreement between the BOS and Conservation Commission on a development permit.

Conscom wanted to go in a direction different from what the BOS thought the town wanted.

Disagreement was not so strong that it resulted in fractured relationships.

Derrick Chin

11/09/2015

MARBLEHEAD

BOS: 5 members, elected, 1 yr term each.

PB: 5 members, elected, 3 yr staggered term each
1 associate member, appointed by majority vote of BOS and PB, 3 yr term.

Responsible for:

Land subdivision

All new non-residential bldgs over 700 sqft

All new residential construction/additions over 500 sqft within Shoreline/Harbor Front districts

Endorsement of ANR plans

Definitive plans

Special permit:

Site plans

Wireless communications

Incentive zoning

Smart growth

Sponsors zoning amendments articles for Town Meeting.

ZBA: 5 members, appointed by BOS, 5 yr staggered term each
4 alternate members, appointed by BOS, 5 yr term each

Responsible for:

Special permits, other than permits granted to PB

Variances

40B comprehensive permits

Vacancies/Lack of Volunteers

PB used to meet twice a month and had a volunteer problem.

Used local advertising and word-of-mouth similar to Acton.

Now meeting once a month which seemed to have solved the volunteer problem

Conflicts/Competition

No disagreements that were so strong that it led to bad feelings between BOS and PB.

Derrick Chin

11/09/2015