

Executive Summary

This package contains all information pertaining to a modification of the approved Colucci Estates Plan pursuant to M.G.L. chapter 41, section 81w. The developer, 0 Swains Pond Avenue Realty Trust, is proposing to permit and construct a new roadway and 9 single family homes on two adjacent parcels of land (G3-0-36 and G3-0-36A) totaling 7.57 acres off of Swains Pond Avenue accessed via Maple Terrace and Hillside Park.

History

In 1998, a 9-lot subdivision, known as the Colucci Estates Plan, was approved on this land by the Planning Board. Abutters filed an appearance and objection to the approval of the plan in land court and the case was held up there until 2017, when it was granted to two abutters and the court entered an order judgement approving the plan and easements were recorded in the Middlesex South Registry of Deeds as part of the settlement. (See recorded copy of Land Court Order and Plan attached in Legal Issues Section.)

In December of 2017 a Preliminary Plan for a 6-lot subdivision was submitted to the Planning Board for consideration however a title issue discovered by the developer's attorney was uncovered and the plan was withdrawn in order to resolve the issue. During the elapsed time informal discussions continued with various city officials to keep the momentum of the project moving forward. As a result of those discussions the development team's confidence in the likelihood of the plan being approved and permitted began to degrade and alternate avenues for development were investigated. As a result of that broader investigation an application for 124 mixed income rental units was submitted to MassHousing for consideration. Through a 9 month long, iterative process that involved the development team, Melrose City officials and MassHousing a compromise application was later submitted for a townhouse ownership project and subsequently a Project Eligibility Letter was issued for that project that included 36 townhouse units.

Upon further discussion with Melrose city officials and the reiteration of their intent to oppose the project to the fullest extent possible, the developer proposed a further compromise. If a modification of the approved 9-lot Colucci Estates Plan could be approved and permitted in a timely fashion the developer was willing to place on hold the 40B project in order to save the time and expense that a protracted legal appeal would entail for both sides.

Legal Issues

There were four potential legal issues that could have prevented the approval of the proposed revisions. Attorney for the developer, James P. Mitchell, outlined his opinion on the law regarding those four issues in memos to the Conservation Commission and City Solicitor and City Planner dated January 13, 2020. The four issues can be summarized as follows.

Zoning Freeze

G.L. c. 40A. § 6, ¶ 7 & 8 jointly provide that exemptive provisions are extended until the date of the final disposition of any appeal and such appeal stays any zoning ordinances and by-laws that become effective after the date of submission of the first plan.

Slope Protection Special Permit Law

The slope protection special permit by-law is not applicable because it was enacted on December 19, 2005, after the approval of the Colucci Estate Plan.

Chapter 41, Section 81W

It is within a Planning Boards power to approve a modification of a previously approved subdivision plan and as the revised subdivision significantly improves upon the previously approved Colucci.

Waiver of Conservation Commission Standards

The list of waivers submitted for the revised subdivision plan is in many respects shorter and less extensive than the list of waivers that would be required for the approved Colucci Estates Plan. Based on that it is within the Conservation Commissions rights, and in their interest to approve the waivers requested.

Specifically there will be less work required in the 15' No Disturb Area, the 20' No Construct Area, and the 100' Buffer Zone, and smaller temporary alterations in order to construct the culvert, which is described in detail in the Initial Subdivision Submission Section below as being a far superior wetland crossing than that required in the approved plan.

As documented in the Memo from City Planner, Denis Gaffey to the Planning Board dated January 27, 2020, the City Solicitor has concurred with Atty Mitchell's argument. (Copy attached in Public Meetings Section)

Documentation:

January 16, 2020 memo Atty James P Mitchell to Planning Board
January 16, 2020 memo Atty James P Mitchell to Conservation Commission
Recorded Colucci Estates Order & Plan

Initial Subdivision Submittal

The initial subdivision modifications were submitted by the developer's engineers, Williams and Sparages, for review before the Planning Board at their January 27, 2020 meeting. The development team summarized the requested modifications and the benefits in a narrative submitted with the changes. The changes requested of the planning board were:

Move the proposed road approximately 60 ft to the west
50 ft roadway right of way is reduced to a 40 ft right of way
90 ft center line turning radius

The changes requested of the Conservation Commission are summarized as being a less impactful set of waivers and wetland crossing and a higher degree of protection for the protected resources that the currently approved plan and a much higher degree of protection that the MassHousing Eligible 36 Unit townhouse condo project.

Documentation:

Narrative describing changes requested to Colucci Estates Plan
Modified Definitive Subdivision Plans
Stormwater Report

Public Meetings

1/27/2020 Planning Board

The development team presented the revised subdivision plan to the planning board and the public. In addition to the developer, the developers engineer and blasting contractor spoke on behalf of the project. After these presentations hearing was opened to the public and approximately 1 hour of public questions and commentary was heard. Summaries can be found in the attached meeting minutes as well as the attached notes taken by the Development Team. On that same date a memo was sent from Denise Gaffey, City Planner to the Planning Board expressing the Planning Departments support of the project as proposed and steps that they would take to insure the robust review of all plans and the incorporation of feedback from both professional reviewers and the public to an eventual final plan.

Documentation:

Planning Board Staff Report supporting revised Plan
Planning Board Meeting Minutes January 27, 2020
Planning Board Meeting 1 Questions and Concerns documented by engineers

2/6/2020 Conservation Commission

The engineer for the developer presented the project to the Conservation Commission. Commission members asked questions and expressed concerns and the floor was opened to the public for further questions and commentary. A summary of those questions can be found attached as documented by the developers engineer. The official meeting minutes as documented by the Conservation Commission are not yet publicly available.

Documentation:

Conservation Commission Meeting 1 Questions and Concerns documented by engineers

Feedback

Public

There have been several opportunities for the public to provide feedback to the developer in a more informal setting than the public hearings described above. On two separate occasions the developer did a site walk with city officials and both times abutters were present and spoke to various members of the development team. Additionally, Ward 7 City Councilor Cory Thomas facilitated a meeting of a wider circle of interested parties and summarized the questions and requests resulting from that meeting for the development team. The developer and his attorney also invited abutters to a meeting to review and discuss issues. That meeting was attended by Cory Thomas and one abutter, Fred Cefalo.

- 1/5/2020 Conservation Commission Site Walk with abutters in attendance
- 2/20/2020 Planning Board Site Walk with abutters in attendance
- 3/5/2020 Friends of Swains Pond Meeting at Milano Senior Center
- 3/13/2020 Abutters Meeting

Documentation:

- Development Update/FAQ
- Friends of Swains Pond Meeting Summary
- Answers to Questions from Public at Planning Board Meeting, January 27, 2020

Professional

As part of the review of the initial submission, the Melrose Engineering Department reviewed all the submitted materials and the City Planning Department contracted an outside engineering firm, BSC Group, to conduct a peer review. The results of those reviews are documented in memos from those groups which can be found in the attached Feedback Section.

Documentation:

- BSC Group Peer Review
- DPW Review

Revised Submission

A new version of the Subdivision Plan has been submitted to the planning board for review at the May 4, 2020 meeting. This revision incorporates additional detail that was not yet present in the earlier submission as well as directly addresses feedback from all sources, public and professional to date. The developers engineer, has drafted memos summarizing changes made to address the feedback from both the Melrose DPW and the Peer review conducted by BSC Group. Those memos are attached in the Revised Submission Section.

Revisions made to directly address feedback from the public are summarized here.

Surface Detention Area moved Underground

Several residents expressed concern that the above ground detention area planned for the corner of Maple Terrace and Patrick's Place would be a breeding ground for mosquitoes and posed a potential drowning risk. Recognizing this as a valid concern the area was redesigned as an underground retention area.

Safety Fencing and giant arborvitae added

Safety concerns were raised regarding the ledge cut that will be present between lot 9 and the existing houses on Hillside Park and Ireson Court. To address this issue a vinyl coated chain link fence will be added at the top of the ledge cut on the border of lot 9 and the adjoining lots and giant arborvitae will be planted between the fence and the ledge cut to screen the view from those lots into the house on lot 9 below.

Stockade Fencing and giant arborvitae added

In order to increase privacy and obstruct views between existing houses and new houses a stockade fence will be installed between lots 1 and 2 and the existing houses on Swains Pond Avenue and giant arborvitae will be planted along the lot line of lot 1.

Street Trees

As part of the standard development plan, 18 street trees have been included along Patrick's Place to help address concerns of tree loss on the site.

Additional Land Conveyed to City

On the Colucci Plan three lots, totaling 66,723 sq ft, were to be conveyed to the city. The modified definitive plan labels lot 10 to be conveyed to the city for conservation (totaling 90,573 sq ft). The developer is also proposing to put a deed restriction on lot 1 for an additional open space easement (covering 18,850 sq ft). In total there is 109,423 sq ft of land being deeded for City use which represents a 64% increase from what was outlined the Colucci Estates Plan.

Additional concessions and avenues for communication have been outlined in the Development Update/FAQ and Answers to Questions from Public at Planning Meeting on January 27, 2020 that was issued in response to direct feedback and is included in Feedback section listed above.

Documentation:

- Modified Definitive Subdivision Plans, Revised 3/11/20
- Stormwater Report, Revised 3/11/20
- Site Distance Sketches
- Construction Sequencing Notes
- Response to Peer Review
- Response to DPW Review

Summary

The materials included in this package, as well as those referenced herein, on the City Of Melrose Office of Planning and Community Development Page for this application are submitted for review by the Planning Board. It is the hope of the developer that this comprehensive summary and consolidated presentation of materials will assist in the speedy review and assimilation of the content and allow for the timely permitting of the project as discussed in negotiations between the developer and various representatives of the City of Melrose.

Copies of original documentation have been included with this summary, except in cases where the original document was excessively large. In the interest of being environmentally responsible, and because those large documents are available on the City of Melrose website, references to the documents online have been included where a hard copy is not.

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