

CITY OF METHUEN
COMMUNITY DEVELOPMENT BOARD
Wednesday January 11, 2023 6:30 P.M.
VIA ZOOM WEB CONFERENCE

MINUTES

1) **Call to Order of Regular Meeting.**

Chairman Stephen DeFeo called the meeting to order at 6:30 pm and read the following statement into the record:

Pursuant to Chapter 186 of the General Laws, An Act Relative to Extending Certain State of Emergency Accommodations, this meeting/public hearing will be conducted via remote means. For this meeting, members of the public who wish to watch the meeting may do so on their televisions by turning to Comcast Xfinity Channel 8 or Verizon FiOS Channel 32 or view on a computer or cell phone via LIVE Stream on <https://www.methuentv.org/methuen-government-tv-live-stream/> No in-person attendance of members of the public will be permitted, and public participation in any public hearing conducted during this meeting shall be by remote means only. If the public would like to participate in the public hearing, please email your questions/comments by noon on the meeting day to kbcowell@ci.methuen.ma.us. The questions/comments will be read during the proceedings and responded to accordingly. Members of the public who wish to speak during the public hearing can register here: <https://www.methuentv.org/govmeet/> by noon on the meeting day.

Chairman Stephen DeFeo introduced new Board member, Shadi Kassis.

2) **Roll Call.**

Members in Attendance

Stephen DeFeo, Chairman	Present
Michael Comei, Secretary	Absent
Brian Boes, member	Present
Ronald Hatem, member	Present
Neal Hunter, member	Present
Shadi Kassis, member	Present
Heather Plunkett, member	Present

Others in Attendance

Kathleen Colwell, Director of Planning
Nancy Hudson, Community Development Confidential Secretary
Carolyn Murray, Special Counsel for the Community Development Board
Petitioners and Representatives of Petitioners

3) **Acceptance of the Minutes.**

a) December 9, 2022

MOTION: Neal Hunter moved to accept the meeting minutes of December 9, 2022.

SECOND: Heather Plunkett

DISCUSSION: None

VOTE: UNANIMOUS

Roll Call

Stephen DeFeo	Yes
Michael Comei	Absent
Shadi Kassis	Yes
Brian Boes	Yes
Ronald Hatem	Yes
Neal Hunter	Yes
Heather Plunkett	Yes

4) **Consent Agenda.**

For the record there was nothing on the Consent Agenda.

5) **Zoning Issues:**

For the record there were no Zoning Issues.

6) **Form A Plans.**

For the record there were no Form A Plans.

7) **6:30 PUBLIC HEARING: 80 Myrtle Street -Definitive Subdivision Pursuant to the Final Judgment of the Land Court in the matter of Colchester Properties, LLC v. City of Methuen Community Development Board, Case No. 19 MISC 000185 (KTS)**

Chairman Stephen DeFeo read the legal notice into the record.

Chairman DeFeo introduced Attorney Carolyn Murray, special counsel to the Community Development Board and asked her to give a brief account of the court case before the Board.

Attorney Murray explained that this is a subdivision case that was originally filed with the Board in 2015 invoking Section VI-D of the Methuen Zoning Ordinances at the time, which is known as the so called LID provision. The LID provision in 2015 stated that “Notwithstanding the Table of Dimensional Regulations, where Low Impact Development (LID) techniques are employed in the design of a subdivision and in accordance with the LID requirements of the Subdivision Rules and Regulations, the minimum dimensional requirements on a lot shall be fifty (50) feet of frontage and 5,000 square feet of area with not less than a 20 foot setback from other structures on the same or adjacent lots and a front and rear set back of no less than 20 feet.”. Following Colchester Properties’ submission of that subdivision application, the City repealed that provision of the ordinance. This marks the first time an application ever came in invoking this LID provision and it will go down as the

last and the only one, since it has been repealed. Originally this was proposed as an 18 lot subdivision and it was ultimately rejected by the Community Development Board. Colchester Properties appealed that decision to the Land Court and we were in the process of prosecuting that case when an administrative decision was made to try to resolve that litigation and the parties agreed to remand the matter back to the Community Development Board to consider a 13 lot subdivision. The matter was remanded back to this Board starting as a 13 lot subdivision. In the course of those proceedings, it was reduced to an 11 lot subdivision, then finally a 9 lot subdivision, which this Board again rejected, in part because the Board felt that the LID provision of the Zoning Ordinance, which applied to this plan, didn't provide enough guidance to the Board, because this Board and the predecessor Board had never adopted any kind of LID requirements in the Subdivision Rules & Regulations. Further, the Board found through analyzing the project with the help of the Board's peer review engineering consultants, TEC, that this subdivision presented insufficient LID techniques to warrant what is essentially a density bonus, because this is a four acre lot in the RR zone district that would require a two acre minimum lot size and 200 feet of frontage if we were applying conventional zoning to this project. Colchester Properties appealed the Board's denial again. We had a trial in March of 2022, and in September, the Land Court issued a Decision and a Judgement in which they found in favor of Colchester Properties and annulled the decision of the Community Development Board, and further, ordered the Board to issue an approval for this nine lot subdivision, subject to any standard conditions. The Court also allowed advanced warning signaling and vegetation trimming conditions to be imposed. The plan being presented by Colchester Properties is precisely as it stood when it was last considered by the Board and rejected. There have been no changes made and no additional waivers have been requested. The Land Court decision also instructed the Board to approve the requested waivers because it had been demonstrated that the Board had approved similar waivers on other projects in the past.

Attorney William Sheehan, representative of the applicant, agreed with the substance of what Attorney Murray has purported, and that is for the purpose of this Board to issue an approval of the nine lot plan dated February 8, 2019. In addition, approval of the five waivers that were requested when they were before the Board. The five waivers are as follows:

1. A reduction of the subdivision roadway from 26 feet to 24 feet
2. The use of grass swales along the roadway instead of sloped granite edging
3. Elimination of sidewalks
4. A dead end roadway with a cul de sac that exceeds the maximum
5. A waiver from the typical roadway cross section of a 2% crown from the center of the roadway to the edge of the pavement in the cul de sac in favor of a 1% slope from the center island to the edge of the pavement.

Chairman Stephen DeFeo opened the Public Hearing to the for comment.

For the record, nobody spoke in favor or in opposition.

Kathleen Colwell noted that she did not receive any correspondence related to this project,

Ronald Hatem expressed concern about the drainage with swales and no sidewalks or curbing. He believes it will not look good and will create problems.

Chairman Stephen DeFeo responded that the plan before the Board is the one that the Land Court judge has sent back to the Board for approval.

Chairman Stephen DeFeo entertained a motion to approve the waivers listed on the subdivision plan.

MOTION: Heather Plunkett so moved.

SECOND: Ronald Hatem

DISCUSSION: None

VOTE: UNANIMOUS

Roll Call

Stephen DeFeo	Yes
Michael Comei	Absent
Shadi Kassis	Yes
Brian Boes	Yes
Ronald Hatem	Yes
Neal Hunter	Yes
Heather Plunkett	Yes

Chairman DeFeo asked Attorney Sheehan if there was a best practices management plan.

Attorney Sheehan responded in the affirmative and noted that he had sent it to Attorney Murray this afternoon. It was part of an exhibit that was introduced as evidence at the trial.

Attorney Murray responded that she was in receipt of the plan, she reviewed it and forwarded it to Kathleen Colwell.

Kathleen Colwell stated that it will be reviewed in the department and she would send it to the Board for their review as well.

Chairman DeFeo stated that if there are no issues with it, it will become part of the conditional approval.

Attorney Sheehan agreed that condition would be acceptable to the applicant.

Chairman DeFeo told Attorney Sheehan that a draft approval would be sent for their review some time in the coming week.

Kathleen Colwell stated for the record, that due to the number of waivers that were granted, the City would recommend that the roadway be privately maintained, which is what the Operation and Maintenance Plan is referring to. This will be a private road, fully and privately maintained by a homeowners' association that will take care of the drainage and will be responsible for all of the items that have been discussed over the past few years that caused the Board some concern. The department will be reviewing the Operation and Maintenance Plan to make sure it covers everything we need it to cover. Ms. Colwell also

Approved by the Community Development Board 02/08/2023
noted for the record that this project will still require approval by the Conservation
Commission.

Attorney Murray stated that she had confirmed with Attorney Sheehan that these were
intended to be ownership units, and as such there will be a homeowners association and all
the documents that go with it. She will make sure that the final condition of approval
references those documents and references the responsibility for maintaining the roadway, the
grass swales, and the rain gardens, etc.

Attorney Sheehan stated that he will send the homeowners association documents to
Attorney Murray for review.

Chairman DeFeo stated that the approval will take place at the next meeting so the Operation
and Maintenance Plan and the homeowners association documents can be finalized.

MOTION: Brian Boes moved to close the public hearing.

SECOND: Heather Plunkett

DISCUSSION: None

VOTE: UNANIMOUS

Roll Call

Stephen DeFeo	Yes
Michael Comei	Absent
Shadi Kassis	Yes
Brian Boes	Yes
Ronald Hatem	Yes
Neal Hunter	Yes
Heather Plunkett	Yes

MOTION: Brian Boes moved to table action on this item to the February 8, 2023 meeting.

SECOND: Heather Plunkett

DISCUSSION: None

VOTE: UNANIMOUS

Roll Call

Stephen DeFeo	Yes
Michael Comei	Absent
Shadi Kassis	Yes
Brian Boes	Yes
Ronald Hatem	Yes
Neal Hunter	Yes
Heather Plunkett	Yes

- 8) **CONTINUED PUBLIC HEARING. 80 Hampstead Street (Guzman Lane) -Definitive Subdivision (Deadline: 12/31/22)**

Kathleen Colwell stated that we have been working for a few months with the applicant of this two lot subdivision. We have worked closely with the Conservation Commission and the Engineering Department. One of the main reasons that the Board was willing to waive the construction of the roadway on this project was due to the unique topography, the wetlands, and the concerns of the neighbors about the drainage from the original three lot subdivision plan, so we are now down to a two lot subdivision plan. This is a large site with more than 12 acres and more than ten acres will be preserved as open space with a conservation restriction placed on it, which will be under the control of the Conservation Commission. There is a turtle habitat in the rear of the parcel which is under the control of the Natural Heritage program. It is out of this Board's control to a certain extent because the area for the turtle habitat is set, and that requires a turtle biologist. Once the turtle habitat is officially established, there will be an official open space plan that will be approved by Natural Heritage. This will all happen through the Conservation Commission. This plan has already been submitted to Natural Heritage and we have correspondence from them basically approving where open space and the conservation restriction will be but it is subject to some final review and some final tweaking. There is also a plan that is required to show signage. For the Community Development Board, Ms. Colwell believes we can refer to the plan as presented, and the open space shown on the plan will be pretty close. She suggests that the Board move ahead and approve the subdivision with some added conditions that prior to endorsement of the plan, that the Natural Heritage approvals be in place and that our plan set reflect the final approved open space.

Dennis Griecci, engineer for the applicant, explained that when they filed a Notice of Intent with the Conservation Commission, they knew that a portion of this site fell within the Natural Heritage limit. The rear of the site fell within an estimated habitat for rare or endangered species. When they filed with Natural Heritage, they pointed out protected species of turtles on the site. Natural heritage agreed that the two lot subdivision was an appropriate use of the site. A post and rail fence, which is shown on the plan, will be constructed in the location of the turtles and everything beyond the fence will be protected as open space with a conservation restriction which will prevent future development, however it will be able to be used for passive recreation. Markers will be placed at intervals to show what the area is, and why it's protected, as required by Natural Heritage. The applicant has hired a biologist to prepare the conservation restriction and application to Natural Heritage. They have also been working with the biologist to prepare the open space plan. They anticipate that it will very closely match what is shown on the current plan. There may be some tweaks, as required by Natural Heritage.

Kathleen Colwell noted that the conservation restriction is not something that this Board would place on the property; it is a different Board, but our decision can reflect that those steps need to be taken prior to the work on site and prior to endorsement of the final plan set. She also pointed out that it will be a private way and there will be no road constructed. It will be two driveways constructed next to each other and privately maintained. Trash and recycling will be brought up to Hampstead Street. The roadway provides the frontage on paper for these lots but through the subdivision process, the Board will waive the construction of the roadway.

Chairman DeFeo noted that if the cul de sac was to be constructed, it would encroach on the conservation area. The Board’s decision to allow the two lots with driveways may impact the area but to a lesser extent than the construction of a roadway. Any changes to the plan should not affect the configuration that is shown on the plan before the Board tonight.

Dennis Griecci commented that the conservation restriction is a boiler plate template that Natural Heritage uses that every conservation restriction will follow. Any decision this Board makes will not be impacted by the conservation restriction that Natural Heritage will require to be placed on the open space. The restriction will be beyond the post and rail fence. There won’t be any restriction on the land that is to be developed and is approved by the Board.

Kathleen Colwell noted that Mr. Kassis is not able to vote on this because it is a continued public hearing.

Chairman Stephen DeFeo entertained a motion to close the public hearing.

MOTION: Brian Boes so moved.

SECOND: Ronald Hatem

DISCUSSION: None

VOTE: UNANIMOUS

Roll Call

Stephen DeFeo	Yes
Michael Comei	Absent
Shadi Kassis	Present
Brian Boes	Yes
Ronald Hatem	Yes
Neal Hunter	Yes
Heather Plunkett	Yes

MOTION: Brian Boes moved to conditionally approve the two lot subdivision at 80 Hampstead Street.

SECOND: Heather Plunkett

DISCUSSION: None

VOTE: UNANIMOUS

Roll Call

Stephen DeFeo	Yes
Michael Comei	Absent
Shadi Kassis	Present
Brian Boes	Yes
Ronald Hatem	Yes

Neal Hunter Yes
Heather Plunkett Yes

9) **CONTINUED PUBLIC HEARING**: 269 Broadway & 2 Osgood Street – Methuen Center Smart Growth Overlay District Plan Approval (Deadline: 02/22/23)

Kathleen Colwell informed the Board that she received correspondence from the applicant requesting a continuance to the February 8th meeting to prepare responses to comments.

MOTION: Brian Boes moved to continue this item to the February 8th meeting.

SECOND: Ronald Hatem

DISCUSSION: None

VOTE: UNANIMOUS

Roll Call

Stephen DeFeo Yes
Michael Comei Absent
Shadi Kassis Present
Brian Boes Yes
Ronald Hatem Yes
Neal Hunter Yes
Heather Plunkett Yes

10) **New Business**.

- a) Set public hearing date:
 - i) 4 Broadway – Special Permit for a drive-through

Kathleen Colwell recommended that the Board set the public hearing for February 8, 2023 at 6:30 pm.

MOTION: Brian Boes so moved.

SECOND: Heather Plunkett

DISCUSSION: None

VOTE: UNANIMOUS

Roll Call

Stephen DeFeo Yes
Michael Comei Absent
Shadi Kassis Yes
Brian Boes Yes
Ronald Hatem Yes
Neal Hunter Yes
Heather Plunkett Yes

b) Any other new business

For the record there was no new business.

11) **Old Business.**

a) Any other old business

Kathleen Colwell reminded everyone that the Master Plan Community Forum will be held January 26th from 6:00 – 8:00 at the High School cafeteria. It is open to the public. There is information on the City website about the Master Plan and a link to the Master Plan website.

For the record there was no additional old business.

12) **Correspondence.**

For the record there was no additional correspondence.

13) **Adjournment.**

There being no further business before the Board, Chairman Stephen DeFeo entertained a motion to adjourn.

MOTION: Brian Boes so moved.

SECOND: Ronald Hatem

VOTE: UNANIMOUS

Roll Call

Stephen DeFeo	Yes
Michael Comei	Absent
Shadi Kassis	Yes
Brian Boes	Yes
Ronald Hatem	Yes
Neal Hunter	Yes
Heather Plunkett	Yes

Chairman Stephen DeFeo adjourned the meeting at 7:23 pm.

Respectfully Submitted,

Nancy P. Hudson
Community Development Confidential Secretary

*** NEXT REGULAR MEETING Wednesday February 8, 2023 ***