

**TOWN OF LINCOLN**  
**MINUTES OF THE PLANNING BOARD**

**JUNE 28, 2016**

**TOWN OFFICES**

**PRESENT:** Margaret Olson (Chair) (MO), Lynn DeLisi, (Vice-Chair) (LD), Richard Rundell (RR), Gary Taylor (GT), Steve Gladstone (SG)

**STAFF:** Paula Vaughn-MacKenzie

**7:00 PM PUBLIC HEARING, Section 17 Site Plan Review: McLean, 16 and 22 Bypass Road, Parcels 109-15-0 and 109-16-0.** Site Plan Review to designate parking to accommodate a total of 21 spaces at 16 Bypass and 22 Bypass Road.

MO opened the public hearing.

Attending for McLean were attorneys Diane Tillotson and Steve Kidder, Andy Healy, facilities manager, and Michele Gougeon. Attorney Robert Kirby represented the abutters and Town Counsel, Joel Bard attended on behalf of the Town of Lincoln.

MO explained that at the last meeting the Board reviewed whether to determine the proposed changes to the approved site plan as minor changes. The Board determined that they were not minor and required a public hearing. The Board has been on a site walk and is now ready to conduct its site plan review for 16 and 22 Bypass Road. MO continued that the Board will now review the project in light of its usual site plan review check list and the documentation submitted on behalf of the applicant. The Board would then discuss the project and lastly, the Chair would open the floor to public comment.

The Board reviewed the site plan review checklist and noted that the submitted site plan was complete. MO noted that screening would be a proper discussion point for 16 Bypass. The Board reviewed the traffic study submitted by McLean which advised that sight lines at the east end of the shared driveway could be improved by trimming the trees along Bypass road or signage could be used to direct the staff at McLean to use the west end of the shared driveway.

The Board asked how McLean would use the property at 16 Bypass. Diane Tillotson, attorney for McLean responded that 16 Bypass would be used for individual meetings with residents and staff meetings, and that they would not be using it for general meetings for staff not related to the residential program. McLean may propose a path between the two properties in the future, but currently they expected to be walking down the driveway and along the easement area to access 16 from 22. A path could be used weather permitting and McLean would want to explore where the

best location for such a path would be and what surface material would make sense for it. The Board noted that all hardscape must be on the site plan along with any proposed lighting.

The Board next asked if there would be any proposed screening between 16 Bypass and the Kanner's property. Ms. Tillotson responded that they had no official proposal but would be open to suggestions that the Kanner's may have. They were hesitant to come up with a plan that would not be agreeable to the Kanners. Ms. Tillotson noted that there is an open space on the Kanner's side and that McLean would consider a fence or a vegetative buffer.

The Board noted that the Board of Health had approved the adequacy of the current septic system at 22 Bypass for 7 beds plus the staff that was originally contemplated. The Board of Health noted that it was possible to increase the number of beds by either applying to the DEP for an alternative Title 5 System Design Flow based on similar facilities and increase the septic system accordingly to accommodate more beds or McLean can operate the facility as a seven bed for one year to determine their baseline water usage and then either apply to the Board of Health for a determination of number of beds based on actual water usage or apply to the DEP for an alternative Title 5 Design Flow based on actual water usage and increase the septic to accommodate additional beds. The Board noted that their review of the site plan would be the same whether or not the final count of beds would be 7 or 12 as originally proposed by McLean.

GT noted that he did not think the parking plan at 22 Bypass had enough space to accommodate the number of spaces proposed with ability for the cars to turn around and exit the property. He also noted that the submitted plan did not show anyone exiting the garage. He suggested that McLean add a fairly modest addition in the parking area to accommodate 3 or 4 spaces in order to free up space within the driveway for circulation. LD agreed and noted that McLean should not be allowed to park in the shared easement area when its own parking is too tight. GT also noted that it was not practical to have that many spaces currently proposed in the confined driveway as the cars would block any emergency vehicle such as an ambulance or fire truck. Ms. Tillotson commented that they could come back if more parking is needed. McLean was trying to keep the property looking as residential as possible. Her preference would be for the Planning Board to approve this plan so that the project could move forward. If parking became an issue, McLean would consider a gravel or asphalt offshoot. Chief Kennedy noted that the parking did indeed look tight on the present plan.

The Board next opened the floor to public comment.

Robert Kirby, attorney for the families noted that he was attending in place of Michael Fee who was on vacation. He questioned the process and stated that there has been no determination of whether or not the use is permitted under Section 40A, Section 3. He wanted the Board to hold off reviewing the site plan until this determination is made. He also stated that Diane Tillotson had referred to the residents as patients rather than residents. He noted that if the use did not qualify as a residential use, the Planning Board would have to address the issue of setbacks.

MO noted that it is common practice for a project to be on parallel tracks with different Boards and determinations. Any approval that the Planning Board might give would not invalidate a determination of the building inspector.

Mr. Ernest Mrakovich asked who paid for the traffic study. MO responded that McLean paid for it. Mr. Mrakovich asked if the Planning Board would accept the findings of the study that was paid for by the applicant. MO noted that the Board routinely relies on information submitted by experts even though the applicant pays for the study.

Dr. Kanner asked how visitor parking would be handled. Ms. Tillotson noted that the traffic study and the parking plan already include parking for visitors. Visitors will be scheduled evenings and weekends so that parking would not be an issue. Dr. Kanner stated that he would be open to discussions regarding screening between 16 Bypass and his property.

Mr. Kirby questioned the adequacy of circulation in light of food delivery trucks and sanitation trucks. He stated that there was not enough room for the workers, staff, visitors and service trucks. MO asked if he would like the Board to require more parking area. She noted that the Board is trying to balance the residential feel of the property and the adequacy of the parking.

Mr. Kirby asked where the trash would be kept and how many times the trash truck would pick up. Andrew Healy, the facilities director stated that trash pickup would be once a week. Trash would not be housed in a dumpster but in residential trash bins. Food delivery would be either once or twice a day and the delivery truck would just drop off and leave. The same system is used at 5 Old Cambridge Turnpike without problems.

Mr. Kirby asked if there would be any additional lighting. Ms. Tillotson responded that there was no additional lighting unless a path between the two properties was constructed and used.

Mr. Kirby asked about laundry and Ms. Tillotson responded that laundry would be done onsite. Mr. Kirby also asked where the trash bins would be kept. Andrew Healy stated that they had not yet decided. MO noted that the trash must be secure and suggested keeping it in the garage.

Mr. Kirby asked if there would be any screening added between 16 and 12 Bypass. Ms. Tillotson responded that there is a small area that is open. The property to the south is heavily wooded and the abutter to the west is adequately screened and there is an existing fence on that side. Robin Laukien, the neighbor in the back noted that there is a path in the back and that although there is screening in the summer, the area is quite open in the winter. Mrs. Laukien requested that she be included in the screening discussion. Another abutter questioned whether the 5 Old Cambridge Turnpike home operated in the same way as the proposed home. He thought that the residents at 5 Old Cambridge left during the day. Ms. Tillotson responded that the 8 bed home at 5 Old Cambridge operated the same way. The residents eat three meals a day there, and are there all weekend. The residents only leave when there is a meeting at the Belmont campus.

Dr. Kanner asked if the Board could restrict the parking. MO responded that under the Dover amendment the Board can impose reasonable regulations but that those regulations cannot result in preventing the use. Dr. Kanner asked if a fire truck could access the property with the current parking plan. The Board responded that they would reach out to the Fire Department to confirm that access was adequate. Suzanne Greco noted that during the winter, the snow could affect the accessibility of fire and other public safety vehicles.

Mr. David of 5 Smith Hill asked how the Town would address the safety of the neighborhood. He asked how the police department would handle calls. Chief Kennedy answered that the Police Department would handle any situation as they normally respond. Mr. Kirby commented that this was a locked facility without bars. What would happen if someone left the residence? Ms. Tillotson responded that McLean has an emergency response plan. The facility is not a locked facility in the sense that the residents are dangerous or violent and need to be "locked up". The residents come to the facility to live voluntarily, but are supervised 24/7 and only go out if they are supervised. There would be two staff awake at all times. If anything generates a 911 call, there is an emergency response plan that has been filed with the Fire Department. Michele Gougeon noted again that no one would be admitted into the program against their will and that these were not dangerous people. Ms. Gougeon commented that a safety issue can occur in any home. She stated that there is less likelihood of an incident with 24/7 supervision. Any 911 calls that have occurred in other programs have resulted from a medical emergency not a behavioral one. She commented that McLean was trying to be reassuring and straightforward with the neighborhood.

Joel Bard stated that the Town is not the guarantor of neighborhood safety and would not be liable for a safety incident.

MO noted that the Fair Housing and Anti-Discrimination laws limit the Board's site plan review and that the Board would use the tools that are legally at its disposal. The Board can work with the public safety department and any of their requirements can be incorporated into a site plan approval. The Board cannot deny site plan approval because the neighborhood is against it. Joel Bard noted that he would advise the Board that they have very limited authority to deny site plan approval. The neighborhood's concerns about safety due to individuals who may live in a particular residence are not germane to site plan approval. Any town board is limited in its jurisdiction and the federal Fair Housing laws constrain the Board as well. Mr. Bard went on to state that another community denied a site plan approval because the neighborhood was against it and not only was the denial overturned but the Town was fined. The issues of use raised by the abutters here are more germane to a review by the ZBA. The property must be reviewed in the same way as any other residence. There are residences with lots of kids and cars.

Mr. Kirby asked why number 16 is being considered a residence if there were no plans for anyone to live there. Mr. Bard responded that there are other forums to review the use issue. MO stated that the Building Inspector will rule on the use issue and if the neighborhood is unhappy with the decision, they can appeal the determination to the ZBA as use issues are within the jurisdiction of the ZBA. The Planning Board has jurisdiction only of the site issues.

Ernest Mrakovich questioned whether McLean had the right to use the entire portion of the driveway easement if he wished to prevent it. He said he would review the easement documents. In addition, Mr. Mrakovich wanted to know if McLean would pursue tree trimming along Bypass Road or direct the staff to use the west entrance by signage. MO asked what the neighborhood prefers. Mr. Mrakovich stated he would prefer nothing. If the road is not available past his property, he would not allow McLean to use that part of the private driveway. Mr. Mrakovich added that the west entrance was very bad in the winter. Dr. Kanner requested that McLean pursue a trimming permit with the State to cut back the vegetation at the east entrance.

Dr. Kanner and Mr. Mrakovich both asked for screening for their abutting properties. MO noted that it would be helpful to the Board if the abutters would get together with McLean and submit a plan to the Board that everyone agreed to. Mr. Mrakovich stated that he did not want fencing. MO responded that specific requests would be very helpful. Linda Kanner stated that she is afraid of large teenage boys and would only feel safe if there was an electrified fence surrounding the facility. She stated that these were disturbed boys being housed in a locked facility. Mr. Mrakovich stated that this program was an experiment by McLean and is not the same as 5 Old Cambridge Turnpike. He thought that this home was being “rammed down Lincoln’s throat” and he suggested an electrified fence and a police officer.

Wendy Cusick stated that she has worked for 20 years as a psychiatric social worker. In addition, she has looked for program options such as the McLean proposal for family members. She noted that these kids are not violent and that the neighborhood is mistaken in stigmatizing them as violent. She noted that McLean has vast experience in running programs like this.

A woman identified herself as an attorney that works with children with emotional issues and stated that violence can happen even if it is not intended. She stated that incidents happen and things escalate and can get out of hand.

Sharon Antia noted that the Town cannot guarantee any neighbor that there will never be an issue. She stated that these kids are not more dangerous than any other kids. She suspected that the Police Chief could speak to dangerous incidents that do or do not occur at other group homes. She noted that the discussion rings similar to racism that occurred when people were concerned with new people moving into neighborhoods. She stated that there are no legitimate data to support the fears. She also stated that Lincoln-Sudbury High School had just had a program night to honor kids in the Excel program. These kids also attended various residential programs and reintegrated into Lincoln-Sudbury after learning skills and tools to help them deal with depression and anxiety. She noted on the one hand we are honoring and celebrating these same kids who are our kids and then in the next sentence branding kids that would be living in this residence as violent criminals.

Carol Kochman of Brooks Road described her own daughter that suffered from anxiety and was unable to attend school for two years. She thanked McLean for coming to help children with these crippling issues. She noted that she looked everywhere for a program and finally found a residential 90 day program in New Hampshire which she believes is very similar to this proposed program. She stated that this program gave her daughter the confidence and tools to deal with her anxiety and enabled her to return to school.

A neighbor stated that he had spoken to a realtor about selling his house and that the realtor said that he would have to disclose the McLean facility to potential buyers.

Dr. Kanner stated that there was a home for disabled adults across Bypass Road and that “NIMBE” was not occurring here. He was concerned with safety and that it will be a question for the ZBA to decide if the use is appropriate for this location. Another neighbor questioned whether the safety issue would increase the Town’s liability insurance. He cited the stabbing that occurred in Lincoln

Sudbury High School. Joel Bard noted that the Town does not take responsibility for these safety issues and does not expose itself to further insurable risk.

LD stated that she thought that it was important for McLean to reach out to the neighborhood and educate them on the program. Ms. Tillotson noted that McLean tried to do just that by organizing a neighborhood meeting with McLean staff. She stated that Philip Levendusky tried to explain the program and was shouted down by the neighbors.

MO suggested that McLean get together with the direct abutters and discuss a screening plan that would be acceptable. She suggested that a substantial green boundary that would grow quickly such as arborvitae or rhododendrons would be appropriate. MO noted that the Board would defer to the preferences of the neighbors. Mr. Mrakovich stated that he would like McLean to come up with a plan that he would review. MO noted that the Board did not want to engage in a guessing game as to what would be acceptable and urged the parties to propose a mutually agreeable plan.

One of the neighbors asked if the approval was a done deal. MO responded that the issue of use would be determined by the Building Inspector and that it was common for Boards to act in concert. The Planning Board was only addressing the site plan and any decision by the Board did not invalidate a determination of another Board. The Planning Board could not discriminate in relation to who will live in a certain residence.

The Board discussed the various issues raised by Board members, the public, and the attorneys and noted that the following Site Plan Review issues remain open:

1. Screening the direct abutters.
2. Accessibility of Fire Safety vehicles.
3. Additional parking area by a modest modification to the driveway.
4. A garbage storage plan.

Ms. Tillotson suggested that McLean will come up with a screening plan which will be forwarded to Mr. Fee or Mr. Kirby for review by their clients. She stated that she will be happy to go out and meet with the direct abutters and that McLean will look at the properties directly abutting 16 and 22 Bypass as well as the back property line. MO noted that the back is tricky and that rhododendrons may be more appropriate than arborvitae in that area. Ms. Tillotson also stated that she would work on getting a permit to trim the vegetation along Bypass road near the east entrance to increase the line of sight.

Mr. Kirby requested a copy of the traffic study and PV-M stated that she would send him a copy in the morning.

GT made a Motion to continue the public hearing until July 26, 2016 at 7:30pm. LD Seconded.  
Passed 5-0.

**9:10 PM**      **DISCUSSION:** Planning Board discussion of site plan review process and procedure.  
6/28/2016.

Bryce Wolf and Bob Domnitz joined the Board for the discussion. The Board discussed changes for properties that have an approved site plan. They noted that in some cases these properties were coming back for insignificant changes that were not required changes to be brought to the Planning Board by other properties that had not undergone site plan review. In addition, some property owners who have gone through site plan review choose to ignore the site plan modification process. The Board discussed the possibility of incorporating a sunset provision for site plans which would be long enough for the initial review to encompass most of any building project. The Board thought that one year may be too short and that five years may be reasonable. RR noted that he thought it was odd that homeowners that have been through site plan review had to come back to the Planning Board for things that other home owner did not.

Bryce Wolf suggested that the Board could stipulate certain things that would be outside site plan review. She thought screening was a requirement that should not have a sunset provision. She noted that the Board could require screening and then 10 years later it could all be cut down. The Board noted that different homeowners could have different preferences regarding screening and that things change over time.

The Board next discussed Section 6.0.2 and the question of when an existing property that has never been under site plan review but exceeds the square footage threshold would be captured by site plan review. Specifically, if a homeowner wanted to add a structure to the property but was not adding any calculated square footage, would the change trigger site plan review? The Board as well as Ms. Wolf and Mr. Domnitz agreed that in such cases, new calculated square footage would need to be proposed. Just the addition of a structure above grade would not trigger site plan review. The additional structures would still need to comply with setback and any other regulations contained in the Zoning Bylaw. The Board directed P-VM to draft a policy memorandum to explain their interpretation of Section 6.0.2 of the Zoning Bylaw to reflect the discussion.

**9:40 PM Business:**

LD made a Motion to approve the June 14, 2016 minutes as submitted. SG Seconded. Passed 5-0.

RLF/Hargreaves-Heald, 24 Sandy Pond Road ANR

The Board signed a revised ANR plan for 24 Sandy Pond Road as the initial plan contained a typographical error that was corrected.

**9:45 PM** RR made a Motion to Adjourn. SG Seconded. Passed 5-0.

Submitted by Paula Vaughn-MacKenzie

Approved as amended July 26, 2016