



## Planning Board

### Meeting Minutes of July 27, 2022

#### **Board Members:**

**Present:** Casey Campetti, Joyce Morrow, David Ganong (Clerk) and Joan Ladik

**Not Present:** Al Patenaude, Tiffany James

**Staff:** Jenny Gingras (Town Planner), Cheryl Lutzca

**Attendees:** Pepperell Community Media, Chris Hayes (NMCOG), various members of the public and Town staff/officials.

#### **1. Call To Order:**

**7:00P.M.** The remote public meeting (recorded for future broadcast by Pepperell Community Media) was called to order by Mr. Ganong (Acting Chair in the absence of Mr. Patenaude). Mr. Ganong said that the meeting is being conducted via a hybrid format. The meeting materials will be provided on screen and are available to the public via the Planning Department webpage. He said this is a continuation of last week's meeting/hearing. The focus tonight is public comment and questions, however the Chat feature for GoTo Meeting has been disabled.

#### **2. 7:05P.M.: Public Hearing Continuation: Consider a Proposed 40R Smart Growth Zoning District and the Submission of an Application for Preliminary Determination of Eligibility for 40R Zoning:**

Pursuant to Chapter 40R of the Massachusetts General Laws, and the associated regulations, specifically 760 CMR 59.05(1), the Planning Board will hold a public hearing on Thursday, July 21, 2022 at 7:00 PM to consider a proposed Smart Growth Zoning District and to consider the Board's submission of an Application for Preliminary Determination of Eligibility for 40R Zoning to the Massachusetts Department of Housing and Community Development. The proponent of this district is the Town of Pepperell. The properties to be affected by the creation of this District is comprised of properties at: 59 Groton Street (Assessor's ID 26-71-0), 1 Hotel Place (Assessor's ID 26-93-0), 3 Hotel Place (Assessor's ID 26-96-0), 4 Hotel Place (Assessor's ID 26-97-0), 4A Hotel Place (Assessor's ID 26-106-0), 5 Hotel Place (Assessor's ID 26-95-0), 6 Hotel Place (Assessor's ID 26-90-0), 59 Leighton Street (Assessor's ID 29-158-1), 59A Leighton Street (Assessor's ID 29-187-0), 41A Lowell Road (31-18-0), 37 Nashua Road (Assessor's ID 25-22-1), 45 Main Street (Assessor's ID 23-147-0), 45A Main Street (20-48-0), 5 River Road (Assessor's

Parcel ID 23-150-0), 23 Mill St (Assessor's ID 26-206-0), and 128 Main Street (Assessor's ID 26-32-0). Please see the Calendar on the Town of Pepperell Homepage (posted 48 hours prior to the Public Hearing) for a link to access this remote meeting from your phone or computer. A copy of the draft application, plans, and other materials are available for review at the Town Clerk's office or the Planning Board Office at Town Hall, 1 Main Street, Pepperell, MA during normal business hours or on the website at <https://town.pepperell.ma.us/424/Zoning-Articles>. Persons unable to attend may submit comments in writing to the Pepperell Planning Board by Friday, July 15, 2022.

Mr. Ganong said the questions last week have been put into a document and we have done our best to answer those questions. The document is also posted to the Town website. We also do the same for any questions asked this evening.

Ms. Morrow declared that she had reviewed the video recording of the previous hearing held on July 27, 2022. She said that she has also read all of the documentation provided, by Ms. Gingras, over the past week.

Ms. Gingras said that all of the letters and questions received are posted on the Town website and she will add any additional letters/comments to the Town website after tonight.

Ms. Gingras read the questions received, as well as the answers to these questions into the record, and provided a screenshare of the same for viewing (all of which are, or will be, posted on the Town website).

Ms. Gingras asked if the Board had any questions at this point.

Mx. Campetti said it looks like 3 things need to be parsed and worked through:

- 1) The actual language of the bylaw and are we confident what is left to be determined in regulation is enough?
- 2) The site selections and number of sites we are going with, a couple are coming up as a couple of problem areas.
- 3) If we are just looking at the potential for what is going to happen at Leighton Street, which is better a 40B (friendly or not).

Mr. Ganong spoke on Mx. Campetti's concerns.

Mr. Ganong announced that the hearing was being opened to public comments and questions.

April Babbitt, 24 Main Street, said that it seems to her that the review process, under 40R, is quite involved. Does this mean under 40R, a developer would have to do these studies, investigations and reports, does he then get permitted to build more units under 40R than he would under 40B. Ms. Gingras said that under 40R we can set a certain number or a certain density. We are proposing a certain number for Leighton Street and a certain density for the other parcels. Ms. Babbitt asked if there is an incentive for the builder because he can build more units under 40R. Ms. Gingras said a developer, for ease of process, would rather go the 40B route. Under 40R the Town gets incentive payments. Mr. Hayes (NMCOG) said that with a 40R there is a unit limit, with a 40B there is no written limit. The developer might work with the Town and get a "friendly" 40B number, but they don't have to, and they can appeal any decision to the state. The advantage for a developer with a 40R over a 40B is that there aren't as many reporting requirements. Ms. Babbitt said how the bylaw is written is important. Discussion ensued. Ms. Babbitt asked if Mr. Hayes has ever seen a developer not go to the full limit. Mr. Hayes said yes. Discussion ensued. Ms. Babbitt asked if the Town can set height limits under 40B. Mr. Hayes said no. Discussion ensued. Mr. Ganong said if Ms. Babbitt wanted to send a list of questions, they can look into them.

Brian Keating, 34 Lowell Road, Unit #1, Chair of Affordable Housing Committee (AHC) read a prepared statement, supported by the AHC, highlighting the benefit of Pepperell adopting a 40R Smart-Growth Overlay District.

Renee D'Argento, 18 Prospect Street, said the need for affordable housing is undisputed, however 40R does not fit all sites. She is on the AHC, and she was the dissenting vote for the 40R plan proposed with the five sites. She believes that the Town Center, Hotel Place and Senior Center are appropriate sites, pending review; as well as Groton Street, which is not on the plan. There are sensitive sites, particularly the Leighton Street site which encompasses Zones 1 and 3 of the aquifer zones. We need to have a buffer going into the future, regarding the increase of severe droughts. This 40R proposal allows a built out of 800-plus units. The purpose of 40R is to encourage affordable housing buildout. Let's do it at a pace and in the right areas. She cited some studies regarding water supplies. We are in a severe Level 3 drought and increasing restrictions to protect the water supply, what will happen when that buffer is gone. She discussed the Leighton Street site and concerns with water supply. The impervious surface is likely to increase with the buildout of a public safety facility. She discussed the SWAP Report. Pepperell has gravel-packed wells (Jersey and Bemis). Central MA is going to grow 25 percent over the next decade and we are on the cusp of this pressure. How will the Board address the water supply issues in consideration of the projected seasonal droughts? Will the Board commit tonight to adhere to 15% impervious on these projects? Mr. Ganong said the Board will not commit to these answers tonight, however we will look into getting these questions answered (similarly to what Ms. Gingras did earlier in the meeting). Ms. D'Argento said the Board doesn't have a policy on what they would accept over our aquifer projection zones. Ms. Gingras said are you asking what is currently required. Ms. D'Argento said she is asking if the Board, because they can require by Special Permit, can require adherence to 15%, or less, in the aquifer protection zone, does the Board have a policy that they feel is protecting the aquifers, and is important enough to have a 15% impervious limit. Ms. Gingras responded and said that in the Guidelines it states it cannot exceed 15% impervious unless a method for artificial recharge is put in place, and from her standpoint that would still be required for any project that came forward under 40R.

Mr. Campetti asked Ms. Gingras if we put something in the regulations that spelled out how much we could waive particular things, based on which part of the WRPOD the project was in, and we put that in the regs, would something like that not be accepted by DHCD, or is that something we would need to set on a project by project basis. Mr. Hayes said he did not have an answer to that question, however he would check with DHCD on that. He said that DHCD likes to see more certainty in the regulations.

Ms. Morrow asked Mr. Hayes if there is a minimum or maximum number of sites to be identified under 40R that DHCD requires. Mr. Hayes said there is no minimum, and the maximum is about 5% of the town. Ms. Morrow asked if we were to identify a site to be developed under a 40R, what would be the protocol if we received a request from another developer. Mr. Ganong said we would have to go back through DHCD and Town Meeting again.

Dave Armstrong, 16 Williams Street, asked why we are planning any development over the WRPOD, why aren't we purchasing the land instead to protect it. Is it possible under 40R to prevent development of certain parcels? Mr. Ganong said if the land was purchased previously by the Town or another person, it would be off the table. Ms. Gingras said that the parcel on Leighton Street came up because the developer, Gary Lorden, owns that property, it is privately owned. These developers still have their private property rights to develop or not develop. He came forward and proposed a 40B development on that site, in talking with him we talked about the possibility of doing a 40R, which is why we are here today, because of that one parcel. It is in the WRPOD. DHCD requires that any parcel chosen be near an area of concentrated development, which is our Town Center. DHCD agreed it could be included in a

40R, because it is near the Town Center. We do recognize that it is in the WRPOD, and with 40R the Town would have more control over protecting that; with a 40B we would not have that control, and that is why we are proposing to go this route, because that is the best choice over a 40B. Mr. Armstrong asked if you could require less development, under 40R, to protect our water resources. Ms. Gingras said with 40R the Town is setting the density limit, at least to DHCD standards. Mr. Hayes said the ZBA makes the first ruling on a 40B development, if the developer doesn't like the conditions they can appeal to the housing appeals committee at the state and they would determine whether to uphold the ZBA's decision, or not. There is no limit of the amount of development under 40B. I believe DHCD would take into consideration the Leighton Street or Mill Site WRPOD. Discussion ensued. Mr. Ganong said that the developer is "on the hook" for providing environmental studies, etc. with 40R, but it is not required with a 40B. Discussion ensued. Mr. Hayes said the 40R would require compliance with wetlands protection buffers.

Dave Lavender, Deerfield Drive, asked about density with 40R, the documents being given for density exceed the state limits. Mr. Hayes said those aren't state limits they are state minimums. In the case of the Leighton Street project it is at 20.5, to meet the 180 unit proposal. The others were chosen to line up with the proposed Town Center Zoning. Mr. Lavender asked if the 20 units per acre are just a suggestion. Mr. Hayes said a Town can set a higher maximum density, but not a lower one. Discussion ensued. Mr. Lavender said he understands we need affordable housing in this town, he just questions some of the choices being made and 40R is being presented to us as a panacea over 40B's. The 40R process makes it difficult and costly for abutters to appeal a 40R and is the Planning Board aware that this is part of the 40R process. Mr. Ganong said these are pre-approved sites if approved at Town Meeting. Brian Keating spoke on Mr. Lavender's concerns and the reason for this in the 40R is to prevent frivolous projects. Ms. Gingras said the sites are chosen and part of the zoning article that has to go through Town Meeting for approval. With a 40B those sites do not go through Town meeting and they are proposed by a developer and go through the ZBA. It is a totally different process.

Peter Steeves (Conservation Commission) said that the Conservation Commission had drafted a letter, which he read into the record. Ms. Gingras said that she answered many of the questions in the Commission's letter, and were there any questions he wanted to follow up on. Mr. Steeves said future proposals should be looked at by other Boards and Departments. Ms. Gingras said she does agree with communication, and she has been trying to stay on top of communicating and this is the beginning of one step in the process. It still needs to go through Planning Board hearing and Town Meeting. She discussed the Leighton Street project, because the developer has said he will do a 40B, if he can't do a 40R. We will have more control/mitigation with a 40R. Developers choose where they want to develop and we are just trying to choose the best tools, through zoning, to have the best project possible on that site, because of all the concerns that are being raised. If the Board decides not to include the Leighton Street project under this SMGOD District, the developer will go for a 40B via the Zoning Board of Appeals, not the Planning Board, and we will have significantly less control over the project. We will continue public outreach and discussions with other Town Boards and Departments. This is a pre-eligibility process and there is plenty of time to discuss this and get public input. This is not a site approval there are many more months of work ahead of us. Mr. Steeves said he would like to see all of these environmental issues that have been brought up by many people and to optimize the amount of land that gets protected, that is the very least at what we are pushing for, and at the most, consider other sites for 40R. Mr. Ganong said the Leighton Street property is a privately-held property and the owner is going to build a 40B or a 40R, and if this site isn't specifically included in this bylaw, if adopted at Town Meeting, they will go for a 40B. It is the reality of that specific site. There is nothing currently proposed for any of the other sites. From a conservation standpoint, it would be nice if that parcel wasn't in the mix, however the Town didn't purchase the land. It's where we are, and it's going to be developed one way or another. Ms. Gingras said it would still have to go through Conservation, due to the proximity of the wetlands. Mr. Steeves said that the Conservation Commission believes that the Leighton Street site is a poor selection, and the Conservation will continue to be involved to mitigate potential damage to our resources.

Chris Masterson, William Street, said that there is an overall sense that this is being very rushed. She thinks everyone on this call/meeting recognizes we need affordable housing. Why not let the 40R stand on its own merit. It seems like the Leighton Street project is being pushed through without input from other Boards and Departments. Mr. Ganong said we completely understand, and it is not a site we sought out, the developer approached the Town. She said that as a town we shouldn't be doing things to benefit a developer. She asked how much can the 180 unit number be reduced in the zoning? 180 units is a lot, this same property did have a 40B proposal on it in 2008, and in total there were 31 units on there, not 180 units. The 180 number doesn't align with anything reasonable. Mr. Hayes spoke on the Leighton Street parcel, and said there is about 8.2 acres of gross buildable land. Pepperell would have to allow at least 20 units per acre (estimated at 164 units), this is the lowest number we can set a maximum on. If the site's buildable area went down, the number of units could go down. Ms. Masterson said given the details of that parcel, it would be good planning to consider these factors and put a cap on the maximum amount of units that can be put there. Mr. Ganong said if this is approved, and things move forward, this would be flushed out as we go, but it is based on a formula. Ms. Gingras asked if the Board were to go the density route, instead of the 180 units, what is the maximum amount that could be built on that site. Mr. Hayes said you could set the density at whatever you want as long as you didn't go under 20 units per acre. You could go as low as 164 units.

Ron Karr, said that he recalls the first time someone brought a 40B before the Town. He said he believes it was 1987, as he was part of the AHC at that time, and it was on River Road. He asked how many 40B's have been proposed since that time, and how many have actually been built. Ms. Gingras said that she can try and find out that exact number. Mr. Karr said it is pretty close to zero, he said he can't recall any other projects being approved (maybe Tucker Park). He doesn't think there have been any hostile 40B's. Mr. Hayes that there were probably four approved 40B's in Pepperell.

Paula Terrasi, 77 Jewett, Street, Said there are 56 units at Emerson Circle, which was a "friendly" 40B, and the developer gave the Town land for our Nashua Road well head. More recently there was a "friendly" 40B at Birch Drive; and we have another 40B with four units on Thomas Lane.

Ms. Ladik asked Ms. Terrasi if there are other locations for a 40R. Ms. Terrasi said that if the Town staff were involved they could identify other locations. She said we would be more than happy to be involved in the site selection for 40R's. She asked Mr. Hayes about setting the density, if ending up with 180 units was negotiated. Mr. Hayes said that would be a question for Ms. Gingras. Ms. Gingras answered and said the developer came in with a proposal for 240 units initially, and came back and proposed 180 units. He has stated he will build 180 units whether it's a 40R or a 40B.

Mr. Ganong said one of the positive reasons to do a 40R is that there is a benefit to the Town, and gives the Town the ability to ask for all of the reports and the icing on the cake is the financial benefit. If the developer for Leighton Street does a 40R the Town gets money. If he does a 40B the town doesn't get any money.

Ms. D'Argento said good planning is being proactive and assessing the impacts and cumulative impacts before selecting sites. If we were looking at 40B, it would be one at a time, not multiple sites. Mr. Ganong said these sites are being identified as potentials for 40R, which are required to be near a Town Center, it doesn't mean they will be built, and each one individually would be required to do their own impact assessments based on where the town is at that time. Ms. D'Argento said when you put 40R's on the map, and they are approved, it is a by right, where a 40B is not a by right and has to go through the ZBA, and we have a negotiation. 40R goes through very quickly and the abutters have to appeal with their own bond. With 40B it is a 250 day process and we get to have all of the reviews under the ZBA and we can negotiate better to

get the number down. The problem with this is putting them up all at once and making them by right. She asked about the specialized energy code available for adoption in the future, what measures can the Planning Board put in place, and if a project is approved before this new stretch code is in place, are they grandfathered. Mr. Ganong said if a project is permitted under the current code that code applies. Ms. D'Argento said this could be a huge issue going forward, we could have a ton of units built under the old stretch code with fossil fuel. She is a member of the Climate Change Committee and they have brought this up.

Carolyn Ahdab, 19 Deerfield Drive, asked if Ms. Gingras could review the Senior Center parcel and the land beside it, as well as the two parcels next to it that are commercial, to help her understand what she is looking at. She said she is hearing nothing about site remediation. Mr. Ganong said the way things are written there is a list of reports that have to be given. Ms. Gingras said that in the bylaw we are requiring development impact mitigation. Ms. Ahdab asked who decides the impact and the mitigation. Ms. Gingras explained who would do the reports, and if the Board does not agree what's in the report they have the right to hire a third party to review them and this would be at the developers cost. This is Section 9140 of the proposed bylaw. Discussion ensued. Mr. Hayes explained who would be responsible to do the reports for different items, such as traffic, etc. Ms. Gingras read the exact language from the proposed Section 9140 of the proposed bylaw for the SGOD. Mr. Hayes speaks on this topic. Discussion ensued. Ms. Gingras said they will not receive a building permit unless those measures are completed.

Ms. Ahdab said that she wanted to understand the zoning that was next to the Senior Center and also expanding the Senior Center to add housing on to it. She asked Ms. Gingras to read this section of her presentation again. Mr. Hayes responded and said that it is a little confusing, there are two important numbers, with the Senior Center for example. The first number is how many units the zoning would allow if all the other uses went away, and that number is 127, but that is not going to happen. What is proposed is taking a section of the Senior Center land, 1.7 acres of that 5 acre site, which is the part not occupied by the actual Senior Center, and it could have 50 units maximum permitted. Because the Town owns the land, the actual decision would be made by the Town. Ms. Ahdab asked if that crosses from industrial into commercial. Ms. Gingras showed a highlighted section of the map on the screen share and she said the area in yellow where her cursor was, was not zoned for 40R, the area in green is what is being proposed to be zoned for 40R. The current proposal would be for one building.

Ms. Ahdab asked about the series of events that happened on Leighton Street. What prompted the developer to change to a 40R? Ms. Gingras said he came in and said that he was born and raised in Pepperell, and he wanted to provide some benefit to the Town, and by adopting 40R he would be allowing us to receive incentive payments. That was the reasoning he explained at the first hearing/meeting. Ms. Ahdab asked if that was the series of events. Ms. Gingras said yes. Ms. Ahdab said if he was going to subdivide the lot wouldn't it be beneficial to that protective area to have a 40B, where you might have a smaller footprint. Discussion ensued. Ms. Gingras said it is difficult to speak of theoretical situations. 40B's aren't always negative, however a 40R proposal is a better plan overall than a 40B proposal, because we have more control and can require more mitigation. They will help us when evaluating future projects in the Town we will have that baseline information from the developer. Ms. Ahdab said it sounds like you have a good relationship with this developer and Mr. Patenaude did a proposal back a number of years ago for a 40B development. Discussion ensued. Mr. Ganong said if the 40R is passed the developer will go through the proper channels. If we don't approve the 40R he will go down the 40B route. He is pretty much going to build the same thing either way. With the 40R, the State will also do 40S payments which provide costs to cover students that move in, the State helps with the school costs. With a 40B those payments do not exist. Ms. Ahdab said she understands that our enrollment in the schools has been going down the past 10 years. Discussion ensued.

Mr. Ganong said that he would entertain a motion to close the public comment portion of the hearing. So moved by Ms. Ladik, seconded by Ms. Morrow.

**Roll Call Vote Taken:**

Ms. Ladik: Aye  
Ms. Campetti: Aye  
Ms. Morrow: Aye  
Mr. Ganong: Aye

Mr. Ganong said all were in favor and the public portion of the hearing is closed.

Mr. Ganong said that where Mr. Patenaude is not present this evening, he would entertain a motion to continue the public hearing to Monday, August 1, 2022, at 6:00p.m. So moved by Ms. Ladik, seconded by Ms. Morrow.

**Roll Call Vote Taken:**

Ms. Ladik: Aye  
Ms. Morrow: Aye  
Ms. Campetti: Aye  
Mr. Ganong: Aye

All were in favor.

**3. Reports/Correspondence/Discussion:**  
*(Matters may arise that the Chair did not reasonably anticipate)*

a. **Staff Updates:** None

**4. Future Meetings:**

- a. August 1, 2022
- b. August 15, 2022

**5. Adjournment:**

Mr. Ganong asked for a motion to adjourn the meeting. So moved by Ms. Ladik, seconded by Ms. Morrow. All in favor. Meeting adjourned at 9:32p.m.

**Planning Board Meeting Minutes of July 27, 2022, respectfully submitted by Cheryl Lutcza**