

**Zoning Board of Appeals Minutes
April 20, 2021**

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2021 MAY 12 P 12:06

Present: Elisabeth Garber-Miller, Chair; Darlene Pruitt, Clerk; Eric Correia; Associate Members Ryan Maxwell and Matthew List

MANSFIELD
MASSACHUSETTS

The chair read the following notice:

Whereas both the Federal Centers for Disease Control and Prevention and the Massachusetts Department of Public Health have advised residents to take extra measures to put distance between themselves and other people to further reduce the risk of being exposed to COVID-19, Governor Baker has issued an order suspending certain provisions of the Open Meeting Law, Massachusetts General Law c. 30A, §20.

In order to satisfy the Open Meeting Law requirements, today's Town of Mansfield Zoning Board of Appeals meeting will available for to public via GoToWebinar and Mansfield Cable. The instructions for joining via GoToWebinar are in the Meeting Notice on the Town's Website at www.mansfieldma.com and then clicking on today's date on the calendar.

1. Zoning Board of Appeals Meeting called to order at 7:30 p.m.

2. Public Hearing – Appeal of Planning Board Site Plan Decision – Hands-On Montessori School, 19 Knight Way – Attorney Jason R. Talerman

Ms. Garber-Miller appointed Mr. Maxwell and Mr. List to participate in the hearing.

The chair read the public hearing notice on an appeal filed by Attorney Jay Talerman of the Planning Board's February 12, 2021 site plan approval to Hands-On Montessori School with respect to proposed construction of a 1,200 square foot school at 19 Knight Way (Assessor's Plat 3, Parcel 51) in the Residential 1 (R1) Zone.

The following documents were introduced at the public hearing:

- Copy of public hearing notice, which ran in the [Mansfield] *Journal-News Independent* on April 2, 2021 and April 9, 2021;
- Copy of Appeal of Site Plan Approval Issued to Hands On Montessori School 19 Knight Way, Mansfield – FOD, LLC (Owner) filed with the Town Clerk's Office on March 2, 2021;
- Copy of December 9, 2020 and February 10, 2021 Planning Board meeting minutes;
- Copy of February 12, 2021 Planning Board "Certificate of Action Site Plan."

Attorney Jason Talerman, Mead, Talerman & Costa, LLC, on behalf of appellants Steven and Kirsten Murawski, Rick and Yohana Rosemark, Marco and Amanda D'Amato, Steven and Karen Purtell and Jeffrey Weiner.

Attorney Talerman explained a site plan decision is not usually appealed directly to the ZBA unless the town has a process in its zoning, which Mansfield does.

Ms. Garber-Miller said the building permit has not been issued yet and asked if Attorney Talerman would prefer to continue the hearing until after the permit has been issued, then deal with both matters together. Ms. Garber-Miller noted Attorney Talerman sent the board a letter late this afternoon regarding a number of conditions and asked if those would be better dealt with under the building permit appeal. Attorney Talerman said he doesn't have a quarrel with continuing the public hearing to match up the processes. He said he is concerned about getting into a loop because if the ZBA has the ability to overturn the site plan decision, then no building permit could be issued. He said there are some issues that might be considered under a building permit grant, but said the building permit cannot be granted because of the pending site plan appeal. He also noted he does not believe the permitted entity, FOD, LLC is entitled to a building permit as a Dover Amendment use because it is not a non-profit organization.

Attorney Lanza said he does not think this appeal is not ripe because a building permit has to be issued before an appeal can occur. He said it makes no sense to address the site plan and building permit issues separately. He suggested continuing the public hearing and setting a date certain, and if no action is taken on the building permit, this public hearing could continue.

Ms. Garber-Miller said it would be her inclination to wait until the issues can all be joined and a definitive decision be issued. She said it is her understanding the building permit is in process.

Attorney Talerman said there is a significant amount of work going on at the site. Ms. Garber-Miller said she spoke with the Building Inspector today, who said they can do site work at their own risk, but not building work. Attorney Lanza said they can proceed at their risk with site work, and if they get a building permit, they can proceed with building work at their own risk. Attorney Talerman disagreed. He said this is a zoning issue, not a code question, and they do not have zoning relief because there is an ongoing appeal. Ms. Garber-Miller said if there are concerns about the scope of work, the best person to talk to is the Building Inspector. Attorney Lanza said they will request enforcement when the building permit is appealed. He said he would supply Attorney Talerman with a copy of the building permit when it is issued.

Attorney Lanza said there has been a long history with this project and a lot of litigation, including three land court and two appeal court decisions. He suggested the board seek advice from town counsel on this issue.

Motion: To continue the public hearing to June 8, 2021 at 7:30 p.m. (Pruitt-Maxwell)

Pruitt – In favor

List – In favor

Correira – In favor

Maxwell – In favor

Garber-Miller – In favor

Five (5) in favor. Zero (0) opposed. Zero (0) abstentions. **PASSES**

A resident asked whether Ms. Miller will provide her attorney with the building permit so he can forward it to Attorney Talerman expeditiously. Ms. Garber-Miller said she thought that would happen.

3. Correspondence and Minutes

4. Adjournment

Motion: To adjourn at 8:10 p.m. (Pruitt-Maxwell)

Correia -In favor

Pruitt- In favor


List – In favor

Garber-Miller- In favor


Maxwell – In favor

Five (5) in favor. Zero (0) opposed. Zero (0) abstentions. PASSES

Next Zoning Board of Appeals Meeting: May 11, 2021 at 7:30 p.m.



Signature of Clerk



Date of Approval