

April 8, 2019
Planning Board
One Lafayette Street
Wakefield, MA 01880

Upon notice duly given the regularly scheduled meeting of the planning board of the town of Wakefield was called to order by Chairman William Spaulding at 7:00 p.m.

Members present: William Spaulding, Paul Semenza, Matthew Lowry and William D'Amore

Also present: Paul Reavis / town planner and Linda Donaldson / clerk

1. Montrose School Lane: Restrictive Covenant

Mr. Spaulding stated that this meeting is not a public hearing but a public meeting and the board would not be hearing from any public this evening for this one item and it's up to the board as to how we work this tonight. He suggested going through the information and answering any questions and he'd like to have a decision at the end of this meeting.

Board members have in front of them a draft that Mr. Reavis and Mr. Mullen prepared and Mr. Spaulding said that "on Wednesday they couldn't just order a cease and desist" as the town attorney requires a vote of the planning board and a demand letter from the planning board to the owners before he will seek any legal action.

Mr. Spaulding said after going to the site and hearing from four abutters, tonight we will look at the demand letter and go through the facts as to what's been done up until now. Previous decisions, the covenant and everything we have from Montrose School Lane has been sent to Mr. Mullen along with any correspondence from the Patti's.

History of Montrose School Lane:

In 2008 a covenant was approved by the planning board and each resident of Montrose School Lane had to sign the covenant when they purchased their home. Mr. Reavis said that the developer sites the covenant but it's not in their deed that the buffer cannot be disturbed.

In 2016 the Patti's approached the planning board to build a retaining wall and the board denied this request to build a wall.

In 2018 the Patti's came back to the board requesting to do some clearing of dead trees, branches, etc., and a plan was developed after the board did a site walk of the property. Mr. Spaulding met with the tree company on site to see the clearing that was going to be done. The property was marked as to which trees would be removed, etc., and a really good job was done.

Mr. Spaulding was very surprised to hear from Mr. Reavis last week when one of the abutters called him and left a message that there was a small excavator out in the buffer zone so Mr. Spaulding went and visited the site the next day. Nobody was around including any workers and all of the trees are now gone from the buffer zone. He took pictures from various angles as well as from Mrs. Joyce's driveway, all of which were submitted to board members.

Mr. Spaulding returned to the site on Wednesday, April 3, 2019 at approximately 4:30 p.m. and there was no work being done. He walked the property line between #19 and #21 and saw two down spouts at the rear of the Patti's property with flex hoses attached and leading into a trench that had been dug. The hoses lead into the buffer zone so Mr. Spaulding feels that they are taking the water from the roofs and distributing it into the buffer zone. After seeing this he went to town hall and sat down with Mr. Reavis and they called Mr. Mullen requesting his advice.

Mr. Spaulding said that the abutter at 271 Salem Street is very concerned about her yard flooding now after seeing what was going on in the Patti's back yard.

Mr. Semenza said that if they're messing with the drainage that was established in 2008 then that's a problem and he's also concerned for the neighbors.

Mr. Spaulding pulled up the covenant on his phone and read it aloud and discussion ensued on the wording and if there's a *do not disturb* area.

Mr. Lowry said that it's more disturbing to him that they are disturbing the root systems of the trees just by the fact that they're doing work in there.

Mr. Spaulding said that the board has to vote to send a letter to Atty Mullen and Mr. Reavis added that the board has to itemize the damages and what the board expects as a resolution to the damages; how does the board cure this.

Mr. Spaulding said, as a minimum restoring it back to the way it was; we don't really know the damages and we don't know what they're ultimately doing to answer to.

Upon discussion and suggestions "restoring it back to the way it was in its natural state and to protect the trees that are still there so their root systems aren't damaged as then they would die. Also to protect what remains and replacement trees planted to recreate the buffer zone with the type of trees that were there before they began disturbing it" or something to this effect was decided on.

Mr. Spaulding thinks that they would have to hire a professional landscape designer who would submit a plan to the board. Regarding a timeline they should respond within ten days to the demand letter.

Mr. Semenza doesn't think that the board should trust them and suggests that the professional landscape plan be submitted to the town planner by May 20th.

Mr. Reavis doesn't want Mr. Patti to come to the May 21st meeting with a plan that he's drawn himself to filler buster.

The board is looking for a professional plan created by a landscape architect/designer noting the location and species of all existing and proposed plantings to restore the "no disturbance area" to pre-disturbed condition. The NDA as noted on the subdivision plan has been disturbed and violated; existing trees of varying nature have been removed, roots have been disturbed, exposed and damaged, and soil has been disturbed and moved around.

Land protected by the restrictive covenant and shown as the cross hatched area on the plan will be the wording used instead of buffer zone. The planning board is to receive the professional plan on or before May 20th.

The Patti's are to cease and desist the work in the protected area and they are responsible for any pre and ongoing damage that should occur. Once the planning board receives, reviews and approves the plan submitted they will set a date for compliance of the approved work.

Mr. Semenza said for them to restore the land protected by the restrictive covenant back to the pre-disturbance condition and natural undisturbed state as this area was for privacy and runoff control.

Upon compliance of the approved work the planning board will visit the site.

A motion was made by Mr. Semenza, seconded by Mr. Lowry, that the planning board finds the land protected by a restrictive covenant at 19 Montrose School Lane has been removed in violation of Condition #7 of the Planning Board's Definitive Subdivision Plan decision of July 8, 2008, recorded Bk51544Pg91, as shown on sheet #7 of the Definitive Subdivision Plan set, recorded Plan #682 of 2008; with violations and penalties and enforcement powers granted to the Wakefield Planning Board, running with the land, through the Montrose School Lane Supplementary Restrictive Covenant, Easement & Agreement – Existing Trees, recorded Bk51544Pg111. Further, the above restrictions are noticed, described, and referenced by book and page number, in the deed for 19 Montrose School Lane from Montrose School Park LLC to Anthony Patti and Kristin L. Patti, husband and wife as tenants by the entirety, recorded Bk63122Pg423, July 1, 2009.

VOTED: Mr. Semenza, Mr. Lowry, Mr. D'Amore and Mr. Spaulding in favor

NOT PRESENT: Mr. Fowlie

A motion was made by Mr. Semenza, seconded by Mr. Lowry, that the Chairman of the Planning Board is authorized to send a demand letter to the owners of 19 Montrose School Lane and request assistance from the Town Attorney in drafting said letter and further authorize the Chairman to sign any documents required to seek an injunction or sue for

damages should the owners not comply with the requirements/milestones set forth in the demand letter.

VOTED: Mr. Semenza, Mr. Lowry, Mr. D'Amore and Mr. Spaulding in favor

NOT PRESENT: Mr. Fowlie

Mr. Spaulding will send Mr. Mullen a notification tonight that the board voted and drafted a letter to send to him.

2. Adjournment

A motion was made by Mr. Lowry, seconded by Mr. D'Amore, to adjourn the meeting at 8:50 p.m.

VOTED: Unanimously in favor

Respectfully submitted,

Linda J. Donaldson, Clerk