

September 7, 2023

RE: 16 & 0 Bishops Lane

Dear Planning Board:

Thank you for another opportunity to express our concerns and for asking Mr. Young to address the comments raised by abutters.

In order to save time at the next hearing, we would like to provide some additional feedback to the Board in writing. We have reviewed Mr. Young's most recent plans and comments, and are providing consolidated comments from several families into this letter to save time and avoid repeating the same concerns in multiple letters. We note that the concerns below are not ranked in order of significance, as it is truly hard to determine which of the concerns is the most serious since they all are significant.

A waiver is required because the existing portion of Bishops Lane is not 46-feet wide

As an initial matter, we agree with the town's position that Mr. Young is required to seek a waiver relating to the width of the existing part of the lane. MA Gen L ch 41 § 81ff (2022) states:

“[r]ecording of the plan of a subdivision in the registry of deeds before the subdivision control law was in effect in the city or town in which the subdivision was located shall not exempt the land within such subdivision from the operation of said law except with respect to lots which had been sold and were held in ownership separate from that of the remainder of the subdivision when said law went into effect...”

The rationale behind this statute is to prevent lots held by innocent owners from retroactively being deemed to be non-compliant. Mr. Young is not seeking to build a home on any lot that was already approved in a subdivision plan. Moreover, Mr. Young, as the successor of interest to the original developer, is not entitled to reliance on 81ff since the lots he seeks to build upon have never been held in separate ownership from the remainder of the subdivision. Even if Mr. Young were not the successor-in-interest to the original developer, Massachusetts courts have found that planning boards have the authority to apply their regulations to lots requiring the construction of rights of way and installation of municipal services, even within plans that were registered prior to the adoption of the Subdivision Control Act, because the town's interest in adequate access to subdivision lots justifies a board's imposition of its current subdivision rules and regulations regarding access, as long as it does not interfere with abutters rights in a right of way.

We urge the Board to not grant this waiver because of the very close proximity of the existing structures to the right of way. In the most recent plans, you can see that the sidewalk and road will come within a few feet of the existing structures. This creates a hazard for the existing property owners for the benefit of only one. While, in some cases, paving a greater portion of the road makes the road safer that cannot be said to be the case here, where widening the road eviscerates any separation of the existing buildings from the road.

Mr. Young's "safety concerns" are merely a pretext to make profit

If we could summarize Mr. Young's argument as to why waivers should be granted, it would be that there are current deficiencies in the road that would be addressed if he were permitted to develop the land (which is currently landlocked) behind his home. In our view, there are several issues with his reasoning:

1. Mr. Young states that Bishops Lane is unsafe because it is not a two-way road. Under this logic, there should be no one lane roads anywhere in Hingham but this is completely inconsistent with the character of a historic town settled in the early 1600s. In determining whether or not a road is safe, the town considers the length of the road and how many homes are on it. Under the design standards, a road that is less than 400 feet long has special dispensations because it is so short. Our town has proudly preserved the historical look and feel of the town, and we should not completely change the character of Bishops Lane to turn it into a two-lane road just so Mr. Young can lengthen it and add more houses to it. The lane as it currently exists, ~300 feet long with 3 homes, is little more than a shared driveway and has a great safety record. It is adequate for what it is—a historic lane with very limited traffic. While it does not perfectly conform to current¹ design standards, as a private road that has existed without issue for over a 100 years, there is no need to change it if no one is adding additional homes. Quite to the contrary of improving safety, this project creates the issues and challenges raised by abutters where currently there are none. It makes conditions less safe for the other homes on Bishops Lane, the homes on South Street, and the homes on Del Prete.
2. Mr. Young indicates that his plan would bring a fire hydrant closer to his home, however, his home is within the required distance of a hydrant under Section 18.5.2 of the Massachusetts Fire Code 2021² (which is modeled after The National Fire Protection Association's Model Fire Code³) which provides:

18.5.2 Detached One- And Two-Family Dwellings

Fire hydrants shall be provided for detached one- and two-family dwellings in accordance with both of the following:

- (1) The maximum distance to a fire hydrant from the closest point on the building shall not exceed 600 ft (183 m).
- (2) The maximum distance between fire hydrants shall not exceed 800 ft (244 m).

¹ We note that the lane came very close in several respects to meeting the design standards for a Limited Residential Road as they existed until the specifications were amended in 2018.

² <https://up.codes/viewer/massachusetts/nfpa-1-2021/chapter/18/fire-department-access-and-water-supply#18.5.2>

³ <https://www.nfpa.org/Assets/files/AboutTheCodes/1/Errata1-15%20-1.pdf>

This is not a plan for additional fire hydrants. It is a plan to create a subdivision which necessitates additional hydrants. Based on his own statements⁴, his home is currently less than 600 feet from a hydrant, and this distance satisfies Massachusetts state requirements, as well as the recommendations from the NFPA. The need for additional hydrants is only created by Mr. Young adding more homes to Bishops Lane behind his current home and therefore this should not be considered a public benefit.

3. Mr. Young's project decreases safety for the homes located at 264 and 266 South Street. In order to carve out the maximum number of lots for his property, Mr. Young has located the new street as close to the lot line as he can. This means that the owners of these homes on South Street have very little to no buffer between their properties and the new road, which will require significant retaining walls given the slope. Even though Mr. Young is no longer asking for a waiver of the 8% grade, the road will be still the maximum grade allowed by Hingham's design standards, and will present a danger to anyone using those backyards that does not exist today. It will also detract from the usability of the backyards as snow removed from the road will be deposited onto their backyard.
4. Mr. Young's project decreases the safety for homes at 25 and 26 Del Prete. Mr. Young's project creates a stormwater basin directly behind the two homes on Del Prete Drive. According to Merrell's response to questions at the last hearing, this basin will have standing water for up to 72 hours at a time IF everything functions as planned. We note that in reading more about this, several sources mention that failures can be very costly to fix, and again, the abutters would be relying on only four homes to voluntarily fund the maintenance of this drainage infrastructure:

"Like most other things, a detention basin may not function properly or it may fail prematurely if not properly maintained. Once a detention basin fails, it is often very expensive to correct.

Many detention basins are located on private property, including parcels of land owned and maintained by a homeowners association (HOA). Local governments do not have the authority to maintain components of the storm sewer system on private property, including detention basins. Rather, these are the responsibility of the lot owner to maintain."⁵

⁴ In his letter "Response to N. Makela," dated August 14, 2023, Mr. Young cites a letter dated July 17th for support of the distance between his home and a hydrant, and that a ladder truck could not reach his home. However, the July 17th letter from the Fire Prevention Officer does not discuss either point. Perhaps Mr. Young intended to cite his own letter, which is dated June 21st, and was uploaded to the Planning Board's website on July 11th. In any case, Mr. Young indicated that the entrance to his home is 590 feet from the closest hydrant. The method he employed to measure the distance to the hydrant results in the greatest possible measurement. The hydrant in front of 237 South St. would be only 450 feet away if you measure to the closest point (instead of to the entrance) and assume that the hose could cut across the lawn of 234 South St. Regardless, even measuring as he did, the distance is less than the maximum 600 feet.

⁵ <https://clermontswcd.org/wp-content/uploads/sites/23/2016/08/clermontswcdbasinmanual.pdf>

These basins, when full of water, are the definition of an attractive nuisance for any small children residing at or visiting these homes. It only takes minutes for something to go wrong. Additionally, the nature of the basin poses other hazards, including providing a breeding ground for disease carrying mosquitos, and exposure to contaminated runoff water. We urge the Board to review even just a small selection of sources on this topic to see the myriad of ways in which this project decreases safety for everyone abutting this property.⁶ We note that the concern is particularly pronounced for 26 Del Prete since the home was sited at the back property line putting the home and deck especially close to the basin, while leaving very little space for a buffer.

5. Mr. Young has shown you a photograph of the street being blocked by a moving truck. We note that issue would not be solved by Mr. Young's proposal. The size of that truck would block every road in Hingham. By taking driveways for parking away, and adding curbing, it is not clear how much wider the road would even be as cars would still need to be parked somewhere.
6. On several occasions, Mr. Young referenced the fact that the neighbors should have appreciated the invisible bounds of the existing right of way which has existed for 100 years. We wonder though, should Mr. Young not have the same standard applied to him? It feels disingenuous for him to say his neighbors should have known they were not entitled to their driveways and side yards that have been continuously maintained for decades, while he should be granted waivers even though he bought a home on a historic lane, where all of the "safety concerns" he is now citing were plain to see.
7. Mr. Young's response states that "the Applicant shall obtain all necessary permits and approvals to selectively remove and or trim tress located within the sight triangle areas within the right of way." He has not addressed the fact, however, that there are plantings that would obscure sight distances located on private property outside of the right of way and the owners of those properties oppose this subdivision. Without those approvals, the sight distances cannot be maintained.

We do not believe Mr. Young has the right to encumber the road without consent of existing homeowners on Bishops Lane

Mr. Young is creating an HOA that will be responsible for snow removal, as well as maintaining the drainage lot, the newly constructed road, and the deep drainage system, but failures to maintain this will impact the existing homes, not just the HOA members. We note that the Planning Board has indicated that if it were to grant waivers to allow the project to proceed, it would condition them on the road remaining private in perpetuity.

⁶[Retention Ponds: Drowning Hazards Hidden in Full View](#)
[Retention ponds remain magnets for kids, with sometimes deadly results](#)
[Detention Basin & Retention Basin Pros & Cons](#)
[Hazard Assessment for Water Retention and Detention Ponds](#)

While Mr. Young has stated that he has the legal right to improve the 40 foot right of way, we question whether that right includes the right to encumber it with a permanent restriction without the consent of the other fee owners in the right of way. Today, the owners of homes along Bishops Lane have the right to seek to have it accepted as a public way in the future. They may or may not exercise that right, but Mr. Young's project would take that right away from the other owners without their consent and would otherwise infringe upon their current use of the right of way, which they all share.

Under the Planning Board Rules and Regulations adopted under the Subdivision Control Act, we note that an Applicant "shall be the owner (or owners)...of all land included in the subject request for action before the Planning Board." Given that the Board would want to place a restriction on the existing right of way, the existing portion of the right way is part of the land included in the subject request, but the other owners have not signed this application.

Their consent should be required before a restriction is placed on the road that negatively impacts their rights.

The curvature of the road presents dangers to homes downhill on Bishops Lane

We note the most recent report from Mr. Dirk indicated that the centerline radius for the proposed transition between the existing portion of Bishops Lane and the new portion of roadway is approximately 92 feet, well below the design standard of 200-feet. The new plans increase the centerline radius to permit a design speed of 20 mph, but the design standard that apply to a minor street are meant to accommodate a design speed of 25 mph. We strongly urge the Planning Board to not grant a waiver of the 200-foot centerline radius.

Of course, no one on Bishops Lane wants cars or trucks to speed while driving on the road. They all would prefer everyone go as slow as possible. However, additional homes will bring additional traffic. Today, any given home in Hingham will have a delivery truck come to their house multiple times a week if not multiple times a day. It is a sad reality that roads are filled with distracted drivers as well as with delivery trucks that race through neighborhoods to make as many deliveries as quickly as they can. Given how close the existing homes are to where the widened street would end, the abutters fear that inevitably there will be cars and trucks taking that bend at speeds greater than 20 miles per hour. We urge the Board to give special consideration to this issue in light of how close traffic will be coming to the buildings that abut Bishops Lane, and require adherence to all design standards.

A significant performance guarantee and restriction on tree removals should be required if the project proceeds

Without going into our own personal anecdotes, Mr. Young's pattern of behavior is to appear cooperative without following through, which makes the abutters deeply concerned about this project. We believe that Mr. Young has demonstrated this same pattern throughout this application process. For example, he indicated he would provide a tree inventory, and then indicated he would not do so until site plan was triggered. He indicated he would provide a construction plan, and then only provided one for the road, and indicated everything else would be subject to market conditions. Moreover, his construction plan for the road leaves no time for review by the HDC, conservation commission, or fire department for a blasting permit.

For all the reasons we have indicated, we strongly urge the Planning Board to not grant any waivers to this project. However, if the Board should allow this project to proceed, we urge the Board to require a substantial performance guarantee be provided, which would ideally be cash collateralized to ensure ease of collectability. This is an ambitious project that others have tried to pursue before. We understand the grading, ledge removal, and overall cost of construction deterred previous owners from ultimately finding this project to be worth pursuing. Mr. Young himself has stated that his plan to pursue this development is going to be based on market conditions.

We are in an uncertain time. Interest rates are very high, buying power is down, and we have experienced dramatic shortages and inflation impacting the cost of construction in particular since the pandemic. It is not hard to imagine that where Mr. Young is currently imagining flipping 3 homes for \$3 million each, the demand for these homes built deep within a gully may not be as robust in the future, and the cost of completing the project may quickly grow beyond his budget.

Mr. Young should be required to post cash collateral to guarantee his performance that will cover at a minimum the cost of putting the road back together and provide protection to homeowners in the event that their foundations are damaged. In considering the amount of the guarantee, we urge the Board to consider the high cost of repairing antique homes in comparison to a new construction home. We also urge the Board to consider conditioning approval on utilizing alternative methods, such as expansive mortars, that do not create noise and vibrations that blasting creates, and to require professional monitoring of the nearby foundations to identify any issues as quickly as possible to enable early damage mitigation. Blasting presents risks of damage from flying rock, shockwaves, and vibrations, especially when structures are so close. In addition, blasting creates dust fumes, and noise which is traumatic for pets and children.

We also urge that the Board require Mr. Young to not cut down any healthy trees on the properties that will become the site of the new homes until the road is finished and a tree inventory is provided. If he ultimately abandons the project, the mature trees will have been lost for no reason. We further urge the Board, if this does move forward, to require Mr. Young to maintain as much of the landscaping in the right of way as possible (these have heretofore been lovingly maintained by the abutting landowners), and to work with abutters to replace or pay to replace any landscaping to be removed.

We appreciate the Planning Board's time in reviewing and considering our concerns, which are intended to be incremental to the comments we have already raised, including:

- The unspecified and likely lengthy construction schedule for the construction of the new homes, which could cause this project to be a near decade-long nightmare for the abutters;
- The noise disruption of constant trucks and other construction vehicles going up and down Bishops Lane for an undefined period of time, particularly for the homeowners whose homes are in close proximity to the lane;
- The anticipated clear cutting of a beautiful and mature neighborhood forest, which provides both privacy and noise reduction to the many homes nearby (including from the sounds of the passing commuter train and country club);
- The loss of animal habitat and shade;
- The loss of side yards and driveway space for the abutters on Bishops Lane;
- The risk of loss of wetlands, including a potential vernal pool, from the regrading and deforestation;

- The risk of Bishops Lane and South Street becoming impassable if the deep drainage infrastructure fails. With New England receiving bigger and bigger storms each year as a result of global warming, the drainage system will be challenged significantly in the future, and it is not clear that four private homeowners will be able to maintain the system or repair it if there is a failure;
- The loss of a historic trail through the woods that has been used by the public for decades for recreation and to access both the country club and the train station;
- Whether snow removal will be handled appropriately by the four new homeowners so that it does not end up on the abutters' property; and
- The loss of a historic small lane, which adds to the overall charm and character of Hingham.

We thank you for your time,

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Kristen and Craig Shames

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