



# TOWN OF HINGHAM

## Planning Board

### CERTIFICATE OF ACTION DEFINITIVE SUBDIVISION

#### IN THE MATTER OF:

Owner/Applicant: Young Family Trust  
16 Bishops Lane  
Hingham, MA 02043

Agents: Deborah W. Keller, P.E.  
Merrill Engineers and Land Surveyors  
427 Columbia Road  
Hanover, MA 02339

Bruce A. Issadore, Esq.  
Issadore Law LLC  
17 Accord Park Drive, Suite 100  
Norwell, MA 02061



Property: 16 and 0 Bishops Lane, Hingham, MA 02043

Deed Reference: Plymouth County Registry of Deeds, Deed Book 51869, Page 119

Plan References: "Definitive Subdivision Plan, #16 Bishops Lane, Hingham, Massachusetts," prepared by Merrill Engineers and Land Surveyors, 427 Columbia Road, Hanover, MA, dated March 24, 2023 and revised through September 1, 2023 (15 Sheets)

"Emergency Vehicle Turning Movement Sketch Plan", prepared by Merrill Engineers and Land Surveyors, 427 Columbia Road, Hanover, MA, dated July 28, 2023 (1 Sheet)

#### SUMMARY OF PROCEEDINGS

This matter came before the Planning Board (the "Board") on the application of the Young Family Trust (the "Applicant") for Definitive Subdivision Plan Approval under the Subdivision Control Law and the Rules and Regulations of the Planning Board to extend the existing private way known as Bishops Lane to create four new residential lots at 16 and 0 Bishops Lane in Residence District A.

The Board opened a duly noticed public hearing on the application at a meeting held remotely on May 15, 2023, via Zoom as an alternate means of public access pursuant to Chapter 2 of the Acts of 2023 temporarily suspending certain provisions of the Open Meeting Law. Subsequent substantive hearings were held on August 14, 2023, September 11, 2023, and October 2, 2023. The Board panel consisted of regular members Kevin Ellis, Chair, Gordon Carr, Rita DaSilva, Tracy Shriver, and Gary Tondorf-Dick, provided that member Tondorf-Dick was not present at the October 2, 2023 hearing and therefore did not vote on this application. Deborah Keller, of Merrill Engineers and Land Surveyors, Bruce Issadore, Esq., of Issadore Law LLC, and Steven Young, of the Young Family Trust, represented the Applicant. The Board was assisted in its review by Patrick Brennan, P.E., of Amory Engineers and Jeffrey Dirk, P.E., PTOE, FITE, of Vanasse & Associates, Inc. At the conclusion of the review, the Board voted to deny the Definitive Subdivision Plan for reasons set forth below.

Throughout its deliberations, the Board has been mindful of the statements of the Applicant and the comments of the general public, all as made or received at the public hearing.

## **DECISION**

Upon a motion made by Kevin Ellis and seconded by Rita DaSilva, the Planning Board (“Board”) found that the proposed subdivision does not conform with applicable requirements of the Town of Hingham Planning Board Rules and Regulations (the “Rules and Regulations”), adopted September 11, 2018, and is inconsistent with the purposes of the Subdivision Control Law and, therefore, voted unanimously to deny the application, dated March 28, 2023, of The Young Family Trust for Definitive Subdivision Plan Approval under the Subdivision Control Law and the Rules and Regulations, for the following reasons:

**A. Bishops Lane, if extended pursuant to the proposed subdivision, will be a Minor Street, and the entire length thereof, commencing at South Street, must comply with all applicable Rules and Regulations unless the Board finds that the grant of waivers is in the public interest and consistent with the intent and purpose of the Subdivision Control Law.**

1. The proposed application seeks to extend the length of an existing private way known as Bishops Lane, which is a way in existence prior to the adoption of the subdivision control law in the Town of Hingham. Bishops Lane was first laid out as shown on a plan entitled “Plan of Lots in Hingham, Mass.,” dated May 27, 1925, recorded with the Plymouth Registry of Deeds in Plan Book 3, Page 628, as modified by plan also entitled “Plan of Lots in Hingham, Mass.,” dated July 9, 1926, as revised on July 6, 1944, and recorded in Plan Book 6, Page 790.
2. The existing portion of Bishops Lane is a 325’± long Dead End Street (as defined in the Rules and Regulations) commencing at South Street, which provides its public access. The existing portion of Bishops Lane has a 40’-wide right-of-way and a paved travel way of varying widths from 10’ to 23’. The existing portion of Bishops Lane currently provides access to four single-family homes located at 2, 6 and 16 Bishops Lane and 248 South

Street. As noted, the existing portion of Bishops Lane was created and constructed prior the adoption of the Subdivision Control Law in Hingham; however, if constructed today, the length and number of lots served by the existing portion of Bishops Lane would qualify it as a Limited Residential Street under the current Rules and Regulations.

3. The proposed subdivision would extend Bishops Lane by approximately 445' (for a total length of 770'±) and create four residential lots, a 0.57-acre drainage lot (Parcel A) and an unbuildable 0.1-acre Parcel B on the opposite side of the extended portion of the way from Lot 1. Lot 1 is improved by an existing dwelling; therefore, the proposed subdivision would serve three additional residential lots.
4. Under the Rules and Regulations, a Dead End Street is defined as "A street, or network of streets, whether existing or proposed, which has only one public access from the remainder of the community street network. For the purpose of this definition, the length of the dead-end street shall be the sum of the lengths of all roadways beyond the limit of multiple access." In addition, Section 4.B(4)(a) of the Rules and Regulations states: "All dead end streets shall be measured from the nearest point of multiple access (throughway) and then along the centerline or centerlines of the street or streets to the furthestmost limit or limits of the right of way of the required turnaround. For the purposes of this regulation, the point of multiple access shall be the intersection of the dead end street's centerline with the right of way limit of the intersected way or ways."
5. Based on the definition of Dead End Street and the provisions of Section 4.B(4)(a), Bishops Lane, as proposed to be extended pursuant to the subdivision application, must be measured from its commencement at South Street, the point of public access, to the terminus of the extended portion of the way and, if so extended, will be a total of approximately 770' and serve a total of seven single-family dwelling lots.
6. Since a Limited Residential Street, pursuant to Section 4.B(1)(d) of the Rules and Regulations, must be less than 400' in length measured from the right of way of the nearest through street (being South Street) to the end of its turnaround, and the proposed subdivision, along with the existing portion of Bishops Lane, exceeds 400', the requirements of the Rules and Regulations applicable to Minor Streets apply to the entire length of Bishops Lane commencing at South Street through the end of the proposed turnaround, unless the Board, in its discretion pursuant to MGL c. 41, s. 81R and Section 2.E of the Rules and Regulations, grants waivers of applicable Rules and Regulations. A Minor Street is defined as "a street, which in the opinion of the Board is being used or will be used primarily to provide access to abutting lots, and which is not intended for used by through traffic." It is the opinion of the Board that the full length of Bishops Lane currently is being used and, as extended, will be used, primarily to provide access to abutting lots and, as a Dead End Street, will not be used by through traffic.

**B. The existing portion of Bishops Lane is not adequate and must be improved to connect the proposed subdivision adequately to South Street.**

- Section 4.B(2)(c) of the Rules and Regulations provides: “Where, in the opinion of the Board, access, safety and congestion consideration necessitate, a developer shall be required to construct or improve at his own expense, private ways outside the subdivision to connect adequately with public ways.” It is the opinion of the Board that access and safety necessitate that the developer improve the existing portion of Bishops Lane, which is outside the proposed subdivision, to connect the proposed subdivision adequately to South Street, the public way.

**C. The proposed subdivision road and the improvements proposed by the applicant to the existing portion of Bishops Lane do not conform in a number of respects with the Rules and Regulations.**

Certain facts and findings which indicate non-conformance with the Rules and Regulations are highlighted in bold below.

- Table 1, referenced in Section 4.B(3)(a) of the Rules and Regulations, sets forth the minimum design standards for a Minor Street. The note below Table 1 in the Rules and Regulations states: “These design specifications represent minimum standards. More stringent design criteria shall be required by the Board when deemed necessary for present and future vehicular traffic.” The following minimum standards from Table 1 are relevant to the Board’s decision for this application.

	Required	Proposed for existing portion of Bishops Lane Improvements	Proposed for new subdivision extension
Width of Right of Way	46’	<b>40’</b>	Complies
Width of Traveled	22’	Complies	Complies
Edge Treatment	12” cape cod berm on each side	<b>Vertical concrete curb</b>	<b>Vertical concrete curb</b>
Sidewalk	5’ on one side	Complies	Complies
Minimum Centerline Radii	200’	<b>127’</b>	Complies
Maximum Centerline Grade	8%	3% from South Street with steep transition to 8%	8% with transition to 5% to cul-de-sac

The following additional requirements of the Rules and Regulations are specifically relevant to the Board’s decision:

Section	Requirement	Proposed
<b>Alignment of Streets:</b>		
Section 4.B(2)(a)	The streets shall be designed and located so as, in the opinion of the	The right of way of the proposed subdivision road is offset from the existing portion of Bishops Lane by 6’ in

	Board, to be continuous and in alignment with existing streets.	two locations and, therefore, <b>in the opinion of the Board, the proposed subdivision road is not designed and located to be continuous and in alignment with existing streets.</b>
<b>Sidewalks:</b>		
Section 4.G	Sidewalks of adequate width (Figure 1) shall be constructed...as follows: Minor Streets – one side.	A 5' sidewalk is proposed on the easterly side of the entire length of Bishops Lane in compliance with Table 1 and Section 4.G. In addition, a vertical granite curb is proposed which exceeds the requirement of a cape cod berm for a Minor Street.
Figure 1	A grass strip of 4.5' (C) is required between the edge of sidewalk (B) and edge of roadway pavement (D) within the right of way (A).	<b>However, the 4.5' grass strip between the sidewalk and the end of pavement is not provided for in the subdivision plans.</b>
<b>Drainage Systems:</b>		
Section 4.C(1)	The drainage systems shall be designed to the satisfaction of the Board with provision for such facilities and arrangement thereof as in the Board's opinion are reasonably necessary to provide adequate disposal of surface water from all streets and land within and adjacent to the subdivision.	The drainage system is technically designed to provide adequate disposal of surface water from the street and land within the subdivision. However, due to the amount of ledge on the site, <b>the depth of the drainpipes will be up to 20' below the surface of the roadway in certain locations.</b> In addition, as Bishops Lane is, and will remain, a private way, <b>the storm water management structures will be conveyed to a Homeowner's Association consisting of only the 4 lots created by the new subdivision,</b> who will bear the maintenance cost of the entire drainage system, including the deeply buried drainpipes. The Board's peer review engineer, Patrick Brennan, provided testimony to the Board that <b>the installation and maintenance of the drainpipes will be very difficult.</b> Town Engineer, JR Frey, provided testimony that <b>"the complexity and expense of operating and maintaining deep stormwater infrastructure is outside the capability of most homeowner or landowner associations. A failure of this infrastructure would make the roadway impassable."</b>
Section 4.C(3)	A complete storm drain system shall be designed for each street of the subdivision to the satisfaction of the Board.	
Section 4.E	Storm water management structures for detention and/or retention of stormwater shall be located on a separate lot which shall, in the case of accepted roadways be conveyed to the Town and in the case of a private roadway be conveyed to a Homeowner's Association.	

		Based on the required depth of the drainage infrastructure due to excessive ledge on site and the difficulty of adequately maintaining the system over time, the drainage system is not designed to the satisfaction of the Board.
<b>Street Trees:</b>		
Section 5.B4(1)	Trees shall be located on private property and planted a minimum of 5 feet outside the right of way. Spacing shall be 50' on-center.	An adequate number of street trees is proposed but the proposed spacing does not meet the required 50' on center.
<b>Additional Provisions:</b>		
Section 4.B(2)(d)	Due consideration will be given by the Board to the attractiveness of the layout and to the conformance of the ways to the topography.	Due to the significant amount of ledge and mature trees on the site and existing steep grades, the proposed subdivision road cannot be laid out in conformance to the topography, resulting in substantial blasting and a grade of 8% along the majority of the roadway as well as removal of numerous mature trees within the extended right of way.
Section 4.J	Due regard shall be shown for all natural features, such as large trees, water courses, scenic points, historic spots and similar community assets which, if preserved, will add attractiveness and value to the subdivision or to the Town.	

**D. The waivers requested in the application are not in the public interest and are inconsistent with the Subdivision Control Law, and the proposed subdivision fails to conform in other respects with the Rules and Regulations.**

1. The applicant has specifically requested waivers to the following Rules and Regulations:
  - a. Section 4.B(3), Table 1 – To allow the existing portion of the Bishops Lane right-of-way width to remain at 40' where 46' is required.
  - b. Section 4.B(3), Table 1 – To allow a minimum centerline radius of 127' where 200' is required.
  - c. Section 5.B4(1) – To allow street trees in areas where feasible due to the location of ledge instead of the requirement that they be planted at fifty foot on center.
  - d. Figure 1 – To allow no grass strip between the roadway pavement and the sidewalk where a 4.5' grass strip is required.

The Board finds that the requested waiver to Section 5.B4(1) as to the spacing of street trees would be in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law, as the required number of trees would be provided and variation on the spacing is needed due to the location of ledge. However, for the detailed reasons set forth in this decision, the Board finds that the other requested waivers are not in the public interest and are inconsistent with the Subdivision Control Law.

2. Consistent with MGL c. 41, s. 81Q, the Rules and Regulations were adopted with the primary purpose of ensuring the safety of new roadways for vehicles and pedestrians, along with the other purposes set forth under the Subdivision Control Law. MGL c. 41, s. 81R states that a planning board “may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law, waive strict compliance with its rules and regulations.” That determination is made at the discretion of the Board on a case by case basis, taking into account all of the circumstances specific to a particular application of subdivision approval.
3. The Board has granted waivers in the past in certain circumstances to allow a narrower right of way for a Minor Street, to allow for no sidewalk along a Minor Street, and, on one occasion, to allow a minimum centerline radius of 150’ where 200’ is required. However, in each subdivision approval for which the Board has decided to grant one or more waivers, it did so taking into account during its public hearings the totality of the proposed subdivision and whether the granting of such waivers would be in the public interest. The grant of a certain waiver for one subdivision does not, in and of itself, mean that a similar waiver is in the public interest for all future subdivisions, nor does it mean that a planning board is forever thereafter required to grant a similar waiver without regard to the public interest in each case.
4. The specific characteristics of the proposed subdivision road extension in the current application, when coupled with the pre-existing dimensional inadequacies of the existing portion of Bishops Lane, taken as whole, result in a roadway that, even when improved as proposed, will not conform to the Rules and Regulations and will not justify the waivers requested for the reasons described in Part A and Part B above and summarized below. It is further noted that, in addition to the Rules and Regulations for which waivers have been requested, there are a number of additional findings and opinions of the Board made pursuant to the Rules and Regulations that are not satisfied by the subdivision application and are material to this decision.

The existing right of way is 6’ narrower than required for the subdivision extension, and the extended portion of the right of way will be 6’ wider in two different locations such that the new right of way will not align with the existing right of way. The existing historic homes along the existing portion of Bishops Lane are very close to the existing right of way. While a waiver of existing right of way width for a subdivision road extension has been granted in the past, in such instance the existing and proposed portions of the street were substantially straight with a gentle, if any, grade. The existing portion of Bishops Lane has a dramatic curve which will be slightly improved to a centerline radius of 127’,

which is significantly below the 200' that is required, and vehicles will have to navigate from that curve up the proposed new roadway which will have, after substantial blasting, a grade of 8%. A waiver allowing a 150' centerline radius has been granted, but in such case the total length of the roadway was significantly shorter, the grade of the roadway much less steep, and the centerline radius waiver was for a much smaller reduction than what is requested in the current application. While the subdivision road design does not exceed 8%, that is the maximum allowed unless, as expressly stated in Table 1, the Board requires more stringent design criteria. As shown on Sheet C4.1 of the Definitive Subdivision Plan set, the roadway will be at 8% slope for the majority of its length with a significant transition from 3% travelling from South Street and a later transition to 5% to the cul-de-sac.

The proposed subdivision includes a sidewalk, as required for a Minor Street, but does not include the 4.5' grass strip required to separate the sidewalk from the paved portion of the street. A sidewalk is important along Bishops Lane (while it may have been waived in the past for subdivisions with less significant dimensional nonconformities) because of the combination on Bishops Lane of a substantial curve and slope. The applicant proposes to mitigate the danger created by the lack of the 4.5' buffer by installing a vertical concrete curb where a cape cod berm is typically required. However, if a vehicle coming up were to accelerate beyond the recommended speed to get up the steep grade or over accelerate down such grade and lose control due to ice or otherwise, it may jump the curb directly to the sidewalk. Vertical concrete curbing is not a treatment that is recognized under the Rules and Regulations as a substitute for the 4.5' grass strip. Even where vertical granite curbing is required for more major roadways a 4.5' grass strip is still required for pedestrian safety.

The applicant has testified that the proposed project will improve some of the inadequacies of the existing portion of Bishops Lane and the Board has received testimony from a Board consultant and Town staff as to the minimum sufficiency of some improvements, while receiving testimony from a Board consultant and other staff as to challenges arising from the design. In particular, while the proposed project would improve existing conditions in some respects, the centerline radius is still materially deficient and is combined with the steepest possible maximum slope. The proposed subdivision, while installing new stormwater structures, requires installation of drainpipes deeper than 10' below grade and as deep as 20' in some locations, making long-term maintenance extremely difficult both physically and financially for the four homeowners who will be required to maintain it.

In conclusion, the proposed subdivision road extension with modifications to the existing portion of Bishops Lane will result in a significant increase in roadway length, a continued deficiency in centerline radius along the existing curve, a steep slope of the proposed new roadway, inadequate sidewalk design, extreme depth of drainage infrastructure resulting in substantial blasting in the short-term and challenges for maintenance in the long-term, and the inability to design within the topography of the site. Taken together, and reviewing the proposed project as a whole, as the Board must do, numerous aspects of the proposed subdivision are not in

conformance with the Town of Hingham Planning Board Rules and Regulations, and the cumulative negative impact of the many deviations do not render the requested waivers in the public interest or consistent with the purposes and intent of the Subdivision Control Law.

For the Planning Board,



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Kevin Ellis, Chair  
October 4, 2023

**In Favor:** Kevin Ellis, Gordon Carr, Rita DaSilva, and Tracy Shriver

**Opposed:** None

This decision shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed since the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Plymouth County Registry of Deeds and/or the Plymouth County Land Court Registry, and indexed in the grantor index under the name of the record owner or is recorded and noted on the owner's certificate of title.

