

## PLANNING STAFF REPORT & RECOMMENDATION

**To:** Malden Planning Board

**From:** Malden Planning Staff

**Date:** June 14, 2006

**Subject:** Williams Street (“High Rock”), Malden, MA  
Application for Approval of Definitive Plan of Subdivision (the “Application”)  
(Undated, received by City Clerk on October 31, 2003)  
M.G.L. c.41, §81U & Rules & Regulations of Malden Planning Board Governing  
Subdivision of Land (“MSRR”)

### **APPLICATION:**

A public hearing and decision by the Planning Board on this Application were ordered by the Massachusetts Land Court (*Order of Remand dated March 15, 2006, Misc. Case No.296455*).

The deadline for hearing and decision is June 20, 2006 (See Assented to Motion to Extend the Time to Issue a Decision, dated June 5, 2006).

The following information was filed with the Application:

1. Set of Plans (12 Sheets), entitled, “Williams Street in Malden, MA,” dated October 29, 2003 (the registered professional engineer’s certification is dated October 30, 2003), prepared by Paul A. Marchionda, Registered P.E., Marchionda & Associates, LP, Stoneham, MA
2. “Mitigative Drainage Analysis in Malden, Massachusetts, Williams Street Extension,” dated February 6, 2003, revised February 10, 2003 and October 30, 2003, prepared by John A. Barrows, Registered P.E., Marchionda & Associates, LP, Stoneham, MA

### **RECENT BACKGROUND:**

Since 1996, the same petitioner has submitted several different preliminary and definitive plans to subdivide the same land.

1. In a decision dated February 13, 1997, the Planning Board disapproved a Definitive Plan (dated July 23, 1996 and revised October 8, 1996). Upon appeal by the petitioner, the Court upheld the Board’s denial (decision dated August 30, 2000) and reviewed the validity of several rules and regulations (MSRR), specifically, determining whether certain rules were beyond the scope of the Board’s authority under the subdivision control law because too vague to put the developer on notice of what is required and whether compliance with certain rules was not appropriate grounds for denial but rather conditions to approval.
2. In a decision dated February 12, 2003, the Planning Board disapproved a Definitive Plan (dated November 29, 2002) and stated six (6) reasons for disapproval; the petitioner’s appeal of this decision remains pending in Land Court.
3. No public hearing was held by the Board on the current Application because the statutorily required notice of hearing was not published or sent to abutters. In a decision dated January 14, 2005, the Board disapproved this Application. Upon appeal by the petitioner, the Court remanded the Application to the Board for public hearing and decision.

**SUBJECT OF PLAN:**

The Plan proposes to subdivide approximately 6.7 acres of land in a Residence A zoning district, located at the end of Williams Street, into lots for residential use and roadway.

1. Proposed Lots. The Plan depicts 21 lots, including two designated for the roadways.
2. Roadway System. One street, Williams Street Extension; two cul-de-sacs, one ending the proposed Williams Street Extension and one proposed to be known as Ocean View.

*Note 1: The Plan includes a note on Lot 20, “not buildable at this time.” See Note 4 below.*

**AGGREGATE FEATURES OF PLAN/ UNIQUE CHARACTERISTICS OF THE LAND:**

1. Location of Public Park and Public Access. Public park land is located in the center of the subject land. The park land is a parcel, 1,430 SF, owned by the City, deeded for public park purposes and designated as a Veterans’ Memorial (City Council Resolve 767/1972). The land is currently vacant, except for the base of a flag pole. Public access to the park land is currently via an undeveloped right-of-way, 10 feet in width and approximately 40 feet in length, which begins at Rockingham Avenue. The Plan proposes no new or alternate access to the park land and the existing right-of-way traverses three proposed residential lots.

*Note 2: See correspondence dated June 14, 2006 from John A. Webster, Malden Veterans Commissioner.*

2. Steep Topography. The subject land consists of ledge and bedrock and is vacant except for trees and vegetation. Existing elevations of the land range from 156 feet to 256 feet. The physical character of the land inevitably presents development concerns due to the amount and location of ledge that must be removed to provide safe access via an adequate roadway system and utilities. The unique topography of the subject land may influence the economic feasibility of residential development of the subject land.

**APPLICABLE RULES:**

1. Rules & Regulations of Malden Planning Board Governing Subdivision of Land adopted September 27, 1962 and revised May 18, 1987 (MSRR).

The Court has ordered that the Board must review the Plan under the MSRR in effect at time of submission (October 31, 2003). (See *Order of Remand dated March 15, 2006, Misc. Case No.296455.*)

*Note 3: The MSRR were revised on November 15, 2003.*

2. Chapter 12 (Zoning) of Revised Ordinances of 1991, as Amended of City of Malden.  
The submission of a preliminary plan freezes the zoning in effect at the time of submittal, if a definitive plan is submitted within 7 months, and if the definitive plan or amendment is approved, for 8 years from date of endorsement of the approved plan. (M.G.L. c. 40A, §6).

If the current Application is approved, the applicable zoning are those ordinances in effect when the preliminary plan was filed in April 3, 2003 (disapproved on April 16, 2003; definitive plan filed on October 31, 2003).

*Note 4: The construction, use and occupancy of any structure on the land to be subdivided in the Plan is regulated under zoning (MZO) not subdivision control (MSRR). The dwellings depicted on the Plan should be considered for illustration purposes only because they cannot be approved under this Application under subdivision control law. The Board may consider only minimum lot area and frontage requirements (MSRR, §V.C.3). If a roadway is approved as a definitive plan of subdivision, in the future, the land may be reconfigured and subdivided via the Approval Not Required subdivision control process (M.G.L. c. 41, §81L. The construction, use and occupancy of any structure on the land will be subject to dimensional controls and other regulations contained in the MZO; may require zoning relief in the form of variances; and will require proper building and use and occupancy permits.*

## **I. REQUIRED IMPROVEMENTS: STREETS AND ROADWAYS.**

### **A. Connection to Public Way: Access.**

The Plan proposes a single connection to one preexisting roadway, Williams Street. This connection is proposed as the sole means of access and egress to the roadway system that will serve the subject land.

#### **1. Applicable Rule & Regulation (MSRR, §V.A.1.a):**

The street system of the subdivision must be connected at at least one point with a public way or an existing private way having in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction for the needs of vehicular traffic.

Williams Street has steep grades, sharp curves and varying widths, no greater than 40 feet.

Access to Williams Street is via Marshall Street, off Lebanon Street; or via Rockingham Avenue, High Rock Road and Nichols Road, all three of the latter roadways have steep grades and sharp curves.

Williams Street does not have suitable grades and adequate construction for the needs of the vehicular traffic which could potentially use the subject land and the roadway system, including: residents; guests; emergency apparatus; public services, such as trash removal and snow plowing; construction vehicles; and visitors to the public park land.

#### **2. Waiver Standards Not Met.** Strict compliance with the rules and regulations may be waived when in the public interest and not inconsistent with the Subdivision Control Law. (MSRR, §I.A). The inadequate access to the subject land and proposed roadway system is evidence that a waiver is not in the public interest and is inconsistent with the subdivision control law.

*Note 5: No waiver was requested in writing by the applicant, however, because designed to be nonconforming, the Plan may be deemed to seek a waiver of compliance with this regulation.*

### **B. Classification.**

The proposed roadway system, William Street Extension and Ocean View, may be classified as Class A streets, because they will service land with the potential for high density residential use. (MSRR, §VI.A.1.d).

*Note 5: Classification of streets by residential densities is outlined in the City of Malden Comprehensive Master Plan 1970-1990. High residential density areas are designated to have a density exceeding 29 dwelling units per acre of land; medium density areas have a range of twelve to twenty-nine dwelling units per acre of land.*

The subject land on the Plan has intense development potential. Under applicable zoning laws, townhouse residential dwellings are allowed by special permit and single and two-family dwellings are allowed by right. Based on the area of land used for the proposed roadway system, the remaining lot area and frontage may accommodate 48 single-family dwellings; 27 two-family dwellings or 77 townhouse dwellings.

Evaluation of the proposed roadway system under Class A standards is warranted because of the development potential and resultant large traffic volumes that will be generated and use the roadway system, including: residents; guests; emergency apparatus; public services, such as trash removal and snow plowing; construction vehicles; and visitors to the public park land.

*Note 6: The subject land is located in Planning Area 13, Maplewood Highlands, as designated by said Master Plan and is identified as a high density residential area characterized by severe development problems, namely, the large ledge deposits, and that cannot be feasible developed economically with lower intensity residential uses.*

**C. Width of Street and Roadway.** As designed, the width of the proposed street is 55 feet and the width of the proposed roadway is 35 feet.

1. Applicable Rules & Regulations:

- i. For a Class A street, the required minimum street width is 60 feet and the required minimum roadway width is 40 feet. (MSRR, §V.A.3.a).
- ii. For a Class B street, the required minimum street width is 55 feet and the required minimum roadway width is 35 feet. (MSRR, §V.A.3.a).
- iii. Due to the character of the street or present or probable use of abutting land, the Board may require greater widths on major streets (MSRR, §VI.A.1.d).

The aggregate features of the Plan, including the location of the public park land and the steep topography of the land, sufficiently establish a public interest served by enforcement of the minimum right-of-way requirement.

2. Discretionary Reduction Standard Not Met. The required street and roadway width may be reduced by five (5) feet on each side, *if satisfactory assurance is given*, in the opinion of the Planning Board, that the total vehicular parking needs of the subdivision will be satisfied off the street and on street parking areas are consequently unneeded. (MSRR, §V.A.3. b).

The proposed roadway system will provide the sole means of access and egress to the land to be subdivided. Given the development potential and location of the sole existing access to public park land located in the center of the subdivision, the roadway system must be wide enough to accommodate all forms of vehicular traffic that will use it, including: residents;

guests; emergency services, including, fire, police and ambulance; public services, such as trash removal and snow plowing; construction vehicles; and visitors to the public park land.

The development potential of the subject land and immediate location of the public park land represent increased parking needs. Any townhouse development will be regulated under lesser, then-existing and now outdated parking requirements of 1.5 spaces per dwelling unit; residents and their guests may park on the roadway system if there is insufficient offstreet parking and visitors to the park land will park on the roadway system because no off-street parking exists.

Satisfactory assurance has not been given that the total vehicular parking needs of the subdivision will be satisfied off the street and on street parking areas are consequently unneeded.

3. Waiver Standards Not Met.

Strict compliance with the rules and regulations may be waived when in the public interest and not inconsistent with the Subdivision Control Law. (MSRR, §I.A). The development potential of the subject land and immediate location of the public park land represent increased parking needs are evidence that a waiver is not in the public interest and is inconsistent with the subdivision control law.

4. Greater Widths Required.

Due to the character of the street, namely, a dead-end creating a block 1,400 feet from the nearest intersecting street; the probable use of land abutting the street, namely, the potential residential development; and the present use of land land-locked by the subject property, namely, public park land; the greater widths for the roadway system are appropriate and necessary (MSRR, §VI.A.1.d).

**D. Dead End Streets.** The proposed roadway system is designed to include two (2) dead ends, Williams Street Extension and Ocean View, permanently closed.

1. Applicable Rule & Regulation: Streets designated to have one end *permanently closed* will not be approved unless, in the opinion of the Planning Board, the configuration of natural or man-made features makes *no other solution practical*. (§V.A.6.a, MSRR).
2. Standards Not Met. No information has been presented to support a finding that the configuration of natural or man-made features makes no other solution practical and necessitates two dead-ends. On the contrary, the extensive length of the proposed roadway system onto the subject land maximizes the already intense development potential of the land and indicates lack of consideration of the natural features of the site, specifically, the steep topography and amount and location of ledge. The removal of tremendous amounts of ledge will be required under the proposed roadway system and any resulting development scenarios. Several feasible alternate roadway designs exist, which do not employ dead-ends, including, connecting the proposed dead-ends together or continuing the roadway system to Rockingham Avenue.

2. Waiver Standards Not Met. Strict compliance with the rules and regulations may be waived when in the public interest and not inconsistent with the Subdivision Control Law. (MSRR, §I.A). The proposed dead-end street system creates safety and access problems, given that roadway design restricts access and egress to a sole means (“one-way in and one-way out”) for all traffic that will use the system: residents, general public visiting the public park land, emergency and public services. The intense development potential, location of public park land and resultant traffic, support the finding that a waiver is not in the public interest and is inconsistent with the subdivision control law.

*Note 7: No waiver was requested in writing by the applicant, however, as designed to be nonconforming, the Plan may be deemed to seek a waiver of compliance with this regulation.*

**E. Maximum Length of Blocks.** The proposed street, Williams Street Extension, is a dead-end street and does not intersect with another street. The distance measured from the nearest intersection of streets (Rudolf Street/Nichols Street and Williams Street) to the end of the proposed street, Williams Street Extension, is approximately one-thousand four hundred (1,400) feet in length.

1. Applicable Rule & Regulation: No block shall be more than one thousand (1,000) feet in length measured between the centerlines of intersecting streets, except where, in the opinion of the Planning Board, *extraordinary conditions unquestionably justify a departure from this maximum* MSRR, §V.C.1.)
2. Departure Standards Not Met. The proposed roadway system exceeds the maximum requirement for length of block and does not comply with this rule and regulation. No extraordinary conditions have been presented which unquestionably justify a departure from this maximum. Strict compliance with this regulation is necessary to ensure the safety of future residents of the subject land and members of the general public who will visit public park land located at the heart of the subject land. Specifically, a conforming block size will provide adequate access for emergency services.
3. Waiver Standards Not Met. Strict compliance with the rules and regulations may be waived when in the public interest and not inconsistent with the Subdivision Control Law. (MSRR, §I.A). The safety and access problems that will be created by the proposed nonconforming block, given the intense development potential, location of public park land and resultant traffic, support the finding that a waiver is not in the public interest and is inconsistent with the subdivision control law.

*Note 8: No waiver was requested in writing by the applicant, however, as designed to be nonconforming, the Plan may be deemed to seek a waiver of compliance with this regulation.*

**F. Grade.** The grade of the proposed roadway system is proposed to be eight percent (8%), which complies with Design Standards for Street Grades (not less than 6/10 % nor more than 8%, §V.A.4.a MSRR).

## **G. Design of Streets in Subdivision.**

1. **Applicable Rule & Regulation (§V.A.1.c, MSRR):** All streets in a subdivision shall be designed so that, in the opinion of the Planning Board, they will provide safe vehicular travel

As designed, the Plan does not provide safe vehicular travel for the following reasons:

- a. The proposed street system of the subdivision is not connected with a public way having of sufficient width, suitable grades and adequate construction for the needs of vehicular traffic.
- b. The proposed street width does not comply with the minimum street width for a Class A street.
- c. The proposed roadway width does not comply with the minimum roadway width for a Class A street.
- d. The proposed Plan does not comply with the requirement that no block shall be more than one thousand (1,000) feet in length measured between the centerlines of intersecting streets.

*Note 9: The proposed street and roadway width comply with the minimum street width for a Class B street.*

2. **Waiver Standards Not Met.** Strict compliance with the rules and regulations may be waived when in the public interest and not inconsistent with the Subdivision Control Law. (MSRR, §I.A). The safety and access problems that will be created by the proposed nonconforming block, given the development potential, location of public park land and resultant traffic, support the finding that a waiver is not in the public interest and is inconsistent with the subdivision control law.

*Note 10: No waiver was requested in writing by the applicant, however, as designed to be nonconforming, the Plan may be deemed to seek a waiver of compliance with this regulation.*

## **II. UTILITIES.**

**A. Drainage.** In the opinion of the City Engineer, the proposed underground and surface drainage facilities are adequate to prevent surface erosion, undermining and flooding, in compliance with §VI.A.4.a (MSRR). Post-development runoff does not exceed predevelopment runoff.

**B. Water System.** In the opinion of the City Engineer, the capacity of the proposed system is adequate, in compliance with §VI.A.4.b (MSRR). The system may require additional fire hydrants and gates and valves.

**C. Sewerage System.** In the opinion of the City Engineer, the capacity of the proposed system is adequate, in compliance with §VI.A.4.c (MSRR).

## **OTHER APPROVALS.**

1. Public Works Commission. See attached disapproval dated June 14, 2006.

*Note 11: Per MSRR, the Commission's written approval of the plans must be a condition of the Planning Board's approval of any Definitive Plan.*

2. Board of Health. See attached recommendation dated June 13, 2006.

*Note 12: Per MSRR, the Board of Health must report to the Planning Board in writing, approval or disapproval of a plan and failure to report within 45 days shall be deemed approval.*

3. Fire Department. See attached recommendation dated June 13, 2006.

*Note 13: Review or approval/disapproval by Fire Department is not addressed by MSRR.*

## **PLANNING STAFF RECOMMENDATION:**

The Definitive Plan should be **disapproved** for failure to comply with the following Rules and Regulations of the Malden Planning Board Governing the Subdivision of Land and failure to comply with the standards for waivers:

1. §V.A.1.a. Connection to Public Way. The proposed street system of the subdivision is not connected with a public way having of sufficient width, suitable grades and adequate construction for the needs of vehicular traffic.
2. §V.A.3.a. Minimum Street Width. The proposed street width does not comply with the minimum street width for a Class A street.
3. §V.A.3.a. Minimum Roadway Width. The proposed roadway width does not comply with the minimum roadway width for a Class A street.
4. §V.C.1. Length of Block. The proposed Plan does not comply with the requirement that no block shall be more than one thousand (1,000) feet in length measured between the centerlines of intersecting streets.
5. §V.A.1.c. Design of Streets in Subdivision. Given the noncompliance of the Plan with the rules and regulations regarding Connection to Public Way (§V.A.1.a); Minimum Street Width (§V.A.3.a); Minimum Roadway Width (§V.A.3.a); and Length of Block (§V.C.1), the design of the streets in the subdivision will not provide safe vehicular travel.
6. For failure to pay outstanding real estate taxes in the approximate amount of \$20,441 per Section 1.14 of the Revised Ordinances of 1991, As Amended, of the City of Malden, and M.G.L. Chapter 40, Section 57.