

DRAFT MINUTES

PLANNING BOARD

OCTOBER 4, 2011

Chair Bob Craycraft called the meeting to order at 7:01 PM.

Members Present: Bob Craycraft (Chair), Scott Drummey (Vice Chair), David Bickford (Selectmen's Representative), Dot Veisel, Paul Raslavicus. **Members Excused:** Craig Groom.

Others Present: Amy Manzelli, David Nelson, Charles & Doris Healey, Arthur Capello, Mike Clarke

Public Input: Chair Bob Craycraft asked if there was any public comment on issues that are not on the agenda. There was none.

Healey: Chair Craycraft opened the continued Public Hearing regarding an appeal filed by Charles & Doris Healey of the Road Agent/Code Enforcement Officer decision to grant a driveway permit to Gullmar & Shirley Nelson to repave their gravel driveway at 34 South Shore Road (Map 109-052) with permeable pavers.

David Allen noted that Mr. & Mrs. Healey had not yet paid their application fee for the appeal, and the Board could take no action to approve the application until the fee is paid. Ms. Amy Manzelli said her law firm would stand behind the payment. By consensus the Board agreed to go forward with the continued hearing.

Chair Craycraft said he wanted the parties to limit their remarks to new information and not repeat information or arguments that were made at the previous meeting.

Ms. Manzelli said it was important for the Board to understand the Healeys case and reiterated and expanded upon the three primary points in their argument:

1. No legal driveway exists between the Nelson house and the Healey property line because none was shown on the lot plan submitted to the New Durham ZBA

when the Nelsons requested variance requests for three other unrelated items. Case law from other court decisions limits the property layout to items shown on the variance application. Since none was shown on the lot plan submitted to the ZBA, no legal driveway can exist.

Ms. Manzelli emphasized that the Healeys do not object to the existing gravel driveway and are not asking that it be removed.

2. Because there is no legal driveway the application submitted by the Nelsons to “modify/resurface” a driveway is an inaccurate representation of the driveway status and is there void.
3. Since the proposed Belgard Subterra paver system is a new driveway, it is subject to all requirements of the driveway regulations, and limits on impervious cover. She identified several areas in which the Nelson proposal does not meet the driveway regulations, and restated her case that the Belgard system is not permeable.

Chair Craycraft asked for Board questions and comments. Paul Raslavicus noted that the issue of the amount of impermeable surface is an issue for the Zoning Board of Adjustment, not the Planning Board. Ms. Manzelli agreed.

Board members asked questions about the status of that area of the lot prior to 1998 and discussed it at length.

Chair Craycraft asked Mr. Nelson to add any new information that he had for the Board’s understanding of the case. Mr. Nelson distributed additional photographs. He pointed out that the original lot plan that he provided to the Building Inspector had been lost, so there was no documentation that the driveway was not on the materials the Nelsons had originally submitted to the ZBA.

He emphasized that in all the years of litigation during the 1990’s no one had ever suggested that the driveway between his parents’ house and the property line was illegal. The issue of its legality was being raised for the first time in this appeal. And he emphasized that the court orders in the 1990’s had never declared the driveway illegal, and never asked for it to be removed. They declared the Turfstone pavers impermeable and ordered the ZBA to determine how much should be removed.

Chair Craycraft opened the issue for public comment. There was none. He allowed the period for public comment to stay open and asked Town staff for any comments.

Arthur Capello, Code Enforcement Officer, said it was his understanding that the only issue before the Board was whether there is a pre-existing legal driveway. In making his decision to grant the permit, he looked carefully at the record and concluded that some

sort of driveway had been present since at least 1990 and its right to be there had never been challenged.

Amy Manzelli made her closing remarks, restating the main points in the Healey argument. She noted that the Healeys had not yet received some requested documents from the Town and asked that a decision be held over to the next meeting to allow the applicants to review those materials.

There was additional discussion about some of the technical details of the plan such as the width and location of the Town right of way on South Shore Road, and other information related to the alleged violations to some of the technical requirements of the Driveway regulations.

There was additional discussion amongst Board members. Mr. Craycraft closed the public input at 9:15 PM.

Scott Drummey moved to continue the Public hearing on the Healeys appeal until 7 PM, November 1 at the public library. Dot Veisel seconded. Approved unanimously.

Minutes: Amy Manzelli asked the chair to move the item related to her edits to the September 6 meeting up on the agenda so she could participate in the discussion without waiting until the end of the meeting.

Ms. Manzelli noted that she had made extensive comments on the minutes on the understanding that Mr. Allen had invited such comments. After considerable discussion the Board agreed by consensus to attach Ms. Manzelli's notes to the meeting of this night's meeting without judgment on the merits.

Chair Craycraft said the following agenda items would be carried over to the October 17 Workshop meeting:

1. Working Session on "Transfer" Goals
2. Working Session on 2012 Budget
3. Working Session on 2012 Planning Board Goals
4. Working Session on Stormwater Management and Erosion Control Regulations
5. Working Session on Proposed Amendments to the Stormwater Management and Erosion Control Ordinance
6. Minutes of September 20, 2011

Scott Drummey moved to adjourn at 10:13 PM. Paul Raslavicus seconded. Approved unanimously.

Respectfully submitted,

David Allen, Land Use Administrative Assistant