



**Zoning Board of Appeals
Meeting Minutes
October 27, 2009**

Members in attendance: Richard Rand, Chairman; Mark Rutan, Clerk; Richard Kane; Chan Byun; Gerry Benson; Dan Ginsberg, Alternate; Sandra Landau, Alternate

Others in attendance: Kathy Joubert, Town Planner; Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Rick Leif, Northborough Planning Board; Thomas Hamilton; Teresa Hamilton; Michelle Gillespie; Steve Poole, Lakeview Engineering; John Fouracre; Kevin Quinn, Quinn Engineering; Tony Abu; Michael Edmonds; Alicia Macy; Marie Neiber; Norm Corbin; Doug Stone; Adele Beatty; Charles O'Toole; Brian Smith; Jeff Leland; Kathy Staniunas; Paul DiTullio; George Pember; Tim Shay

Chairman Rand called the meeting to order at 7:03pm.

Chairman Rand introduced and welcomed Chan Byun, the newest member of the Zoning Board of Appeals.

Continued Public Hearing to consider the petition of Dimitrios Voyiatzis for a Variance/Special Permit/Site Plan review to allow a 13,268 square foot two-story mixed use building to be used for restaurant, retail, commercial and/or office use on the property located at 73-85 West Main Street, 7:04PM

Steve Poole from Lakeview Engineering distributed updated plans to the board members that include some minor changes that were incorporated based on input from the Design Review Committee (DRC). Mr. Poole noted that the plans are similar to those sent out a few weeks ago, with the exception that they incorporate the DRC's input. He explained that the changes mostly relate to the landscaping and screenings, as well as the relocation of the dumpsters from the front of the building to the rear corners to get them out of view from Main Street. In addition, Boston ivy will be planted along the bottom and top of the large retaining wall so that, once it is grown in, the wall will be more aesthetically pleasing.

Mr. Poole explained that the original submittal for this project featured one large building, which was denied by the Planning Board after the recent zoning changes. The revised plans feature two smaller buildings, located closer to the street with a center entrance and parking in the rear. Mr. Poole also noted that the project will be

served by town water and sewer, with underground electricity and gas. In addition, the plans include an infiltration system for roof and parking lot runoff.

Mr. Poole explained that the applicant is seeking approval for a mixed horizontal use, and is proposing to include a restaurant, retail, and mixed commercial/retail. He explained that all of these uses are allowed by right if done individually. Mr. Poole also stated that the applicant is seeking a variance to allow for a reduction in the setback from 6 feet to 3.5 feet at the corner. Mr. Poole confirmed that all other setbacks have been met.

Mr. Poole explained that the lighting and landscaping plans appear to be acceptable to the DRC, and noted that there are a few minor open items that remain.

Mr. Poole commented that the site does not provide sufficient parking area for a full second story on the buildings, so the applicant is proposing office and storage space for the restaurant and an office for the property manager to be located on the second floor.

Mr. Ginsberg suggested that it would be possible to shift the building back a couple of feet to meet the setback requirements. Mr. Poole explained that pushing the building back 2.5 feet would result in the retaining wall needing to be 5 feet higher. Mr. Ginsberg asked about the location and height of the wall. Mr. Poole noted that the wall is currently at approximately 10 feet with a 2-to-1 slope. Mr. Ginsberg asked about sight lines. Mr. Poole confirmed the existence of appropriate sight distances under the current plan.

Mr. Kane asked about snow removal and snow storage. Mr. Poole commented that the site is extremely tight, so any snow accumulation will need to be hauled offsite. Chairman Rand asked if there is any snow storage at all. Mr. Poole noted the existence of a 3-foot strip all the way around the parking area, which would accommodate a small amount of storage but reiterated that any significant accumulation will need to be trucked away.

Mr. Benson asked Mr. Poole to explain the handling of the drainage coming off the slope as it approaches the proposed wall. He noted that currently the drainage sheet flows straight down the site toward West Main Street. Mr. Poole stated that there will be a swale behind the wall to pickup any runoff and divert it to an infiltration system. Mr. Benson asked if Mr. Poole has calculated the volume. Mr. Poole noted that approximately 2/3 of the residential property drains through the site, and confirmed that calculations have been provided.

Mr. Kane reiterated that, currently, most of the water flows out to West Main Street. Mr. Poole explained that the site contains a fine silty material that gets washed out during storm events and flows through the haybales. He has presented plans to excavate a large detention basin to address the problem.

Ms. Joubert noted that the board has received review letters from the DRC, Town Engineer (regarding groundwater), Planning Board, and Fire Chief. Michelle Gillespie

commented that the plans propose the use of stone in lieu of mulch in the landscaped areas, and noted that mulch presents a fire hazard especially in the presence of the proposed restaurant.

Ms. Gillespie voiced her opinion that the applicant has done a very nice job with the parking lot plans, but that the DRC would prefer to see a terraced wall instead of a solid wall. If this is not possible, they would seek to find a way to construct a wall that that would be less intrusive than what is currently proposed. She also voiced concern about snow storage.

Mr. Litchfield discussed the comment letter from the Groundwater Advisory Committee, and noted that the use of town water and sewer is to be a condition of approval. He also noted that the plan calls for any tenants to be subject to further review if their business involves manufacturing and/or the use and storage of any hazardous materials. He also voiced his understanding that sprinklers will be included in both buildings.

Mr. Litchfield stated that the proposed impervious cover calculations do meet the requirements, and noted the importance of having the infiltration properly captured on the as-built plan to ensure that everything proposed to be captured will be. Ms. Joubert asked if the applicant has addressed the comments made by the Fire Chief in his review letter, specifically his indication that the 6-inch water main proposed is inadequate. Mr. Poole confirmed that the plans have been modified to provide an 8-inch main, and also noted that the entrance has been revised and now provides the required turning radius.

Ms. Joubert asked about dumpster service and deliveries. Mr. Poole noted that there are unloading areas on each side of the buildings. He also stated that, with the relocation of the dumpsters to the rear of the building, access can be gained without impeding traffic.

Mr. Kane asked if all utilities will be underground. Mr. Poole confirmed that they will be.

Ms. Joubert explained that this application got caught up between the old and new zoning bylaw, and voiced her appreciation to the applicant for choosing to adapt his plan to comply with the new bylaw. She also noted that, aside from the variance, the plan conforms to all other aspects of the new bylaw.

Mr. Farnsworth commented that this is the first time he has seen the plan with the new entrance and planting plan, and suggested that the Fire Chief may have questions about the trees to be planted along the entrances. He noted that the primary concern will be to ensure that the Fire Department's equipment will not be damaged by tree limbs. Mr. Poole explained that the proposal is for a new variety of pear trees, selected specifically because they grow tall and narrow. He also noted that there will be a 20-foot wide lane on either side of the planted area. Mr. Poole agreed to discuss the issue with the Fire Chief.

Ms. Landau questioned whether an updated comment letter should be obtained from the Fire Chief. Mr. Farnsworth suggested that the only issue is with the trees, which can be addressed without the need for another letter.

John Fouracre, 99 Pleasant Street, offered the following comments/questions:

1. There has been no discussion about the side boundaries with regards to setbacks and slopes, which he feels is important.
2. Has the applicant acquired the necessary permit from the State?
3. The applicant appeared before the Conservation Commission a few weeks ago, at which time they were asked to clean up the mess from previous storms and he has not seen any effort to do so.
4. Drainage is an issue and is cause for continued concern.
5. There is approximately 14 feet of state property along the entire front of the site that is about 10 feet high. Mr. Fouracre voiced his opinion that it will not be possible to obtain adequate line of sight if this is not brought down to grade.
6. The applicant was also asked to hydro-seed the back slope and nothing has been done. Mr. Fouracre noted that approximately 2 to 3 feet of the back slope was lost and washed out into the roadways. He voiced frustration that this has been a mess all summer and no corrective action has been taken.

Chairman Rand noted that the issue of the state property does not fall under this board's purview. Mr. Fouracre reiterated his concerns about the inadequate line of sight.

Mr. Poole stated that the slope is now being cut, and that there will be a 2-to-1 slope on the side with the same higher property to remain between the two. He also noted that they have had some conversations with the state, and plan to move forward with the installation of temporary erosion controls and blankets until they obtain approvals from the state.

Ms. Landau commented that there are no side or rear setback requirements under the new zoning bylaw. Mr. Poole indicated that the back corner is approximately 25 feet from the property line. Mr. Fouracre voiced his opinion that there is sufficient room to enable the buildings to be shifted east on the parcel to meet the 6 foot setback. Mr. Poole explained that the goal is to keep the center entrance as wide as possible, and that it would be impacted with such a shift. Mr. Fouracre asked if a sidewalk is required. Mr. Poole noted that the town has requested one, but approval is needed from the state.

Mark Rutan made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Public Hearing to consider the petition of Cyrus Brook Estates of Northborough LLC for Variances/Special Permits to allow construction of a retaining wall along the rear property line of three lots and allow the use of two family homes within the Residential C District and Groundwater Overlay Protection District Areas 2 and 3

as part of the proposed Cyrus Brook Subdivision on the property located at 276 West Main Street and 290 West Main Street Rear, 7:40PM

Kevin Quinn of Quinn Engineering discussed plans for the construction of a 7 lot subdivision with duplex residences served by town water and sewer. He explained that a Special Permit is required for the two family use in a Residential C groundwater area and a variance is needed for the construction of retaining walls that will pass through the side setback.

Mr. Quinn explained that lots 1 and 2 are 40,000 square feet each and that the increase in stormwater runoff can be no more than 15% of the existing conditions. However, because lots 3 through 7 fall in a groundwater 3 district, the increase in runoff must be less than 15%, which is a challenge. Mr. Quinn is therefore proposing the use of bio retention cells, which are shallow depressions that collect, treat, and allow the majority of the stormwater to infiltrate. For larger storm events, the runoff will be diverted to the basin, treated, and recharged as much as possible back to the groundwater table. Cultec chambers will be installed to recharge clean roof runoff, and to meet the required 98% TSS removal. Mr. Quinn commented that the system will work effectively to both remove the majority of suspended solids and put a good amount of highly treated stormwater back into the groundwater.

Mr. Quinn explained that the applicant is also requesting approval to construct a continuous retaining wall along the rear of lots 3, 4, and 5. He noted that they are asking for continuity of the wall, and that denial would result in the builder being required to build individual walls and grade the slopes in between. He also voiced his opinion that a continuous retaining wall will be more visually appealing than a wall interrupted in three places.

Chairman Rand asked about the material to be used to construct the wall. Mr. Quinn noted that the wall will be built using VersaLock blocks with geogrid fabric for stability. Mr. Kane asked about the height of the wall, which Mr. Quinn stated will be 10 feet at the highest with fencing along the top. Chairman Rand asked if this will be a condominium development. Mr. Abu stated that the homes will be individually owned, with an association agreement for maintenance of the wall.

Ms. Joubert commented that the Planning Board is preparing to approve the subdivision, so the road will become a public road with a common driveway for a couple of the proposed duplexes. She also noted that the applicant is waiting to go through the conservation and DEP process, and she expects a decision to be issued at the next Planning Board meeting.

Mr. Litchfield stated that the Groundwater Advisory Committee has recommended that the subdivision be connected to town sewer, and that natural gas or propane be used for heating. He noted that the GAC would prefer that oil not be used and, if it is, that proper containment be provided. Mr. Litchfield also indicated that he has reviewed the impervious coverage calculations, which will be reviewed at the next Conservation Commission meeting, and they do meet the requirements.

Mr. Kane asked if propane tanks, if used, will be buried and what size they will be. Mr. Abu voiced his opinion that each unit would have a 4-ft. x 10-ft., 500 gallon tank.

Adele Beatty, 23 Shady Lane, voiced no objection to the proposed development.

Mark Rutan made a motion to close the hearing. Gerry Benson seconded, vote unanimous.

Public Hearing to consider the petition of Ali Beyranevand, Trustee of Nashoba Village trust, for Variances/Special Permits to allow the conversion of an existing two family home to a three family home in the General Residential District and Groundwater Protection Overlay District Area 3 on the property located at 23 Whitney Street, 7:55PM

Michael Edmonds appeared on behalf of the applicant to ask the board for consideration on two variances and a special permit. He explained that the dwelling is currently a two-family home located in an area designated for two-family homes and the applicant is seeking permission to convert it to a three-family home. He noted that a second variance is needed to allow the two-family home on a lot under the required 20,000 square feet. In addition, a Special Permit is required because the home sits within a groundwater overlay district.

The applicant's architect, Alicia Macy, reiterated the applicant's desire to modify the home into a three-family dwelling, which can be easily done by lifting the roof and adding an apartment in the attic of the existing structure without any change to the building's footprint. She also noted that the home will be connected to town sewer.

Mr. Byun asked about other multi-family homes in the area. Mr. Edmonds noted the existence of other multi-family units in this area. Mr. Byun asked about the master plan, which he understands encourages downtown development. Ms. Joubert stated that, while neither the Planning Board nor the Zoning Board can get into ownership of property, the overall vision has been to create a more pedestrian-friendly and denser environment in the downtown area. She noted that the new zoning bylaw, approved at the last Town Meeting, allows for a mix of commercial and multi-family uses in the downtown area. She also noted that the buildings surrounding this property are all multi-family use, ranging from duplexes to six units.

Mr. Farnsworth asked if the members of the board are clear about what is being presented. He reiterated that multifamily use is not allowed, so the conversion from a two-family to a three-family dwelling requires a variance to allow the multi-family use. Also, because the parcel is located in a groundwater 3 area, a minimum lot size of 20,000 square feet is required for a multi-family dwelling. Since this lot is only 15,000 square feet, a second variance is required to allow a two-family dwelling on a lot of less than 20,000 square feet. The Special Permit is required to allow for a multifamily dwelling in a GW3 area.

Mr. Litchfield explained that the Groundwater Advisory Committee has recommended in favor of allowing the project, partially because it will be connected to town sewer.

Also, while the GAC would prefer to get away from using oil for heating the home, the applicant has agreed to place containment measures around the oil tank within the building.

Mr. Litchfield explained that impervious coverage calculations has been submitted, and the only increase documented falls within the guidelines once the variance is granted. Mr. Benson asked if the impervious coverage includes the expansion of the parking lot. Ms. Macy confirmed that it does.

Ms. Landau asked about access to the third floor apartment. Ms. Macy noted that a stairway currently exists and a second stairway will be built to provide the required second means of egress.

Marie Neiber, 62 Whitney Street noted that the home sits in a historic district and asked about changing the structure by breaking through the roof. Ms. Macy commented that there is no historic district regulation that applies here. Ms. Joubert explained that there is currently no local historic district commission. She noted that, while the town records are sketchy, it is believed that this structure is within the Meetinghouse District, but that it appears to have become defunct through non-use. Ms. Joubert stated that she was unable to locate any paperwork to indicate that the Historic District Commission was ever voted out, but there is no local Commission in existence today. Ms. Neiber asked if it is possible to merge the two Historic boards. Ms. Joubert voiced her opinion that it is possible, but would require a vote at Town Meeting and by the Board of Selectmen.

Norm Corbin, 35 Whitney Street, asked how the applicant will approach modifications to the exterior of the property. Mr. Edmonds stated that the modifications will be done in keeping with the character of the neighborhood. He also noted that the entire exterior will be upgraded and brought up to a first class level, with appropriate landscaping.

Doug Stone, 33 Birch Hill Road, voiced his opinion that the structure should be left as a two-family. He commented that allowing this will set a precedent and result in more property owners pursuing three-family conversions.

Charles O'Toole, 39 Whitney Street, stated that he has no objections to the proposal, and would welcome the upgrade to the building.

Brian Smith, 97 Main Street, commented that he was torn between the two opinions. While he is concerned about changing the character of the town, he also sees the importance of supporting improvements to structures that may end up before a wrecking ball. Mr. Smith questioned how the roof line will change, and voiced support of improvements to the existing structure as long as they can be done in keeping with its historical character. Ms. Macy explained that the plan is to pop out the roof line with dormers on each side. Mr. Smith questioned the owner's intentions for the property once it is improved. Mr. Edmonds indicated that he was not in the position to address that question at this stage. Mr. Smith voiced his opinion that the improvements proposed outweigh any detriment. Ms. Landau reassured the members

of the audience that each case is considered based on its own merit, and that nothing that this board decides becomes legal precedent.

Ms. Landau asked if there is sufficient space onsite for adequate parking. Ms. Macy noted that four spaces have been added, which should provide sufficient tenant parking. Mr. Benson asked about the height of the renovated structure, which Ms. Macy stated will be equal to the height of the existing structure. Ms. Neiber asked about the landscaping in the front yard, especially considering the addition of more parking spaces. Ms. Macy noted that there will be lawn and landscaping in the front. Mr. Kane asked if the proposed changes require that the building have a sprinkler system. Ms. Macy indicated that increasing to a three-family will require the addition of sprinklers.

Mark Rutan made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Public Hearing to consider the petition of Michael LoPresti, agent for Lacava Companies (White Cliffs) for a Variance/Special Permit to allow the addition of a 16-square foot sign to the existing 32 square foot free standing sign on the property located at 167 Main Street, 8:20PM

Michael LoPresti explained that the existing sign is the maximum allowed for a single business, so he is petitioning the board for approval to add a 2 ft x 8 ft hanging sign below it. He noted that this will allow the business to post banners for holidays, special events, etc. Mr. LoPresti commented that they have found that such signage is their best form of advertising next to word of mouth.

Mr. Kane asked Mr. Farnsworth if the 2x8-foot sign, used as Mr. LoPresti describes, would be considered temporary signage and not require permission. Mr. Farnsworth noted that businesses are allowed to display temporary signage for a maximum of 45 days per calendar year. He also stated that by doing it as part of the larger sign, the applicant does not have to comply with the temporary sign limitations.

Mr. Ginsberg asked if the applicant is planning to have several different signs, to be changed on a seasonal basis. Mr. LoPresti indicated that the intention is to have signs for the different holidays and occasional special events throughout the year.

Doug Stone voiced his support of the proposal. He noted that the White Cliffs is a class business and anything we can do to help preserve this town landmark is good for the town.

Gerry Benson made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Public Hearing to consider the petition of Whitney Street Holding Company for a Variance/Special Permit to allow the change to a pre-existing, non-conforming senior residential community use to a non-age-restricted use on the property located at Country Candle Lane and Holbrook Lane. 8:27PM

Attorney Joseph Antonellis stated that the Framingham Cooperative Bank is now the applicant, having taken title to the property through foreclosure. He explained that the applicant is seeking to change the project to remove the age restriction. He noted that the previous owners had done significant work on the site with regards to the dam, sewer, utilities, paving, and site preparation to get it ready for building. He also noted that one, 5-unit multiplex unit has been completed, but none have sold and no occupancy permits have been issued. Mr. Antonellis stated that the recent economic and housing crisis appears to have most significantly impacted the over-55 developments. He also explained that this petition is seeking to change from one non-conforming use to another, which he believes is allowable under the new bylaw since the most recent bylaw revision did not carry over the senior overlay district. Since the permitted project as it now exists does not conform to the new bylaw, it is his opinion that approval is within the board's purview to allow for the change from one nonconforming use to another nonconforming use with a finding that the new use is not substantially more derogatory to the neighborhood.

Mr. Antonellis stated that the applicant is not seeking to do additional or different work on the site than what was originally proposed, the location and size of the buildings will remain the same, and the number of units and underlying use will stay the same. He noted that there is no substantial change proposed other than the removal of the age restriction, and the impact of that is minimal.

Mr. Antonellis voiced his opinion that the fiscal impact will not be substantially different. Though he cannot say how many families with children could move into this development, he cited a survey prepared by the Town of Milford that indicated a ratio of 1 student per 29 townhome units in that community. Mr. Ginsberg commented that this statistic does not seem reasonable and appears to be extremely underestimated. Mr. Antonellis commented that even 5, 6 or 10 students would still result in a positive fiscal impact, and is still better than a single family residential development on the site. He reiterated that the standard set forth in the bylaw requires that the board base their decision on whether the new use is more detrimental than the age restricted project.

Ms. Landau noted that the original decision also included a stipulation that there shall be no more than 3 persons living in a unit, and asked if the applicant is seeking to change that as well.

Mr. Kane recalled that the decision also stipulated that no occupancy permits could be issued until all of the infrastructure work has been completed. He suggested that, if this petition is approved, he would like to see that condition remain. Mr. Antonellis stated that there is still much work that needs to be done on the site, and the bank has authorized the original engineer to file for a new Order of Conditions. Mr. Ginsberg asked if this project is currently to be considered as abandoned. Mr. Antonellis confirmed that it is, and stated that the project will be stopped if the new owner is unable to obtain this relief. Mr. Benson asked if there are any additional improvements currently underway on the site. Mr. Antonellis noted that the new owner has hired Thompson Liston, who has been on the property and is preparing a

list of deficiencies. He noted that one of the detention ponds appears to be somewhat undersized and they are now looking into how to resolve that. He also noted that the applicant is not seeking relief on any of the other constraints.

Mr. Byun asked for clarification that the new nonconforming use is for multifamily homes without an age restriction. Mr. Antonellis stated that, if the town had included the senior residential community in the new bylaw, the applicant would not have the ability to seek the change in this manner. However, since the town chose not to carry forward the senior overlay in the new bylaw, it sets it as a nonconforming use.

Ms. Landau commented that she is still unclear about the applicant's indication that there is no change in the intensity of use. She voiced her opinion that lifting the 3 occupant restriction will result in a change in the intensity of use. Mr. Antonellis voiced his opinion that lifting this restriction does not make the project substantially more detrimental.

Mr. Benson asked if the project is to be 2-bedroom or 3-bedroom units. Mr. Antonellis stated that it is designed for up to 3 bedrooms. Mr. Ginsberg voiced his opinion that the bank is simply looking to lift the age restriction so that they can find a buyer for the entire project. Mr. Antonellis explained that the bank has a separate holding company that has successfully managed other development projects. Ms. Landau asked about lifting the age restriction but retaining the occupancy limitation. Mr. Antonellis noted that it would be difficult to market the units with that condition.

Chairman Rand asked if any research had been done about lowering the price that the units are being marketed at currently. Mr. Antonellis noted that over 55 units are simply not selling, regardless of price. Mr. Kane asked about the condo fee to be imposed. Mr. Antonellis indicated that he did not have that figure.

Mr. Kane asked about trash removal. Mr. Litchfield explained that the pay-as-you-throw curbside pickup would be available to all residents in the development.

Mr. Ginsberg asked if Town Counsel has provided information about anything that would prohibit the board from approving this. Ms. Joubert noted that, now that the senior residential community is no longer part of the bylaw, Town Counsel has opined that the applicant must seek a special permit in order to lift the age restriction. She explained that Town Counsel has indicated that the applicant must meet the following two criteria:

1. Proposed changes must comply with the ordinance or bylaws
2. Structures must not be substantially more detrimental

Mr. Kane noted that the order to create a senior overlay district took actions from the Planning Board, Municipal Code & Bylaw Committee and a 2/3 vote at Town Meeting and questioned why it would not require the same steps to change it. Ms. Joubert reiterated that the ZBA has the authority to allow a change from one nonconforming use to another, which is what the applicant is now seeking.

Rick Leif, Chairman of the Planning Board, stated that his board is very concerned about what is being requested. When the project was originally presented, it was done so with the understanding that the development was being designed with an over 55 age restriction to minimize the overall impact to the town and provide a good opportunity for positive revenue enhancement. Given these benefits, the town agreed to a density bonus that would not have otherwise been afforded. Mr. Leif voiced his concerns that lifting the age restriction while providing a stronger density than normally allowed will result in more families with school-aged children moving into the development. He also noted that the additional condition of limiting each unit to no more than 3 occupants was included in an effort to minimize the number of children. He emphasized the detrimental impact of lifting the age restriction while still allowing the density bonus. He also stated that the removal of the senior residential communities from the new bylaw was not done to allow this situation to occur, but was done because there are other avenues for senior communities to be built without the need for an overlay. Mr. Leif voiced his opinion that approving the removal of the age restriction will be detrimental to the neighborhood and is not in line with what was approved at Town Meeting. He also noted that allowing the construction of this large multifamily development in a residential area is contrary to the intent of the new zoning and does not match what we are trying to do in town. Mr. Leif commented that there are two other senior residential communities in town that are not fully occupied, so the town is not looking to add any additional. Since the town and the abutters had an expectation of what would be built there, Mr. Leif voiced his opinion that the best course of action would be for the owner to build the project as intended or go back and build something that conforms to the bylaw. However, if the petition is approved, he reiterated his suggestion that the density bonus not be allowed. In addition, the number of bedrooms should be reduced and the town should seek some consideration on affordable units to be included. He reiterated that the Planning Board's recommendation is against approval. Ms. Landau commented that the board needs to consider that, given the current market, we are now left with an eyesore on Whitney Street that shows no potential for completion. If there is a way to facilitate completion of the project, the board needs to consider the potential benefit to lifting the age restriction if it will ensure such completion. Mr. Kane voiced his opinion that the board should not allow the construction of 3-bedroom units in the project. Ms. Landau noted that limiting the project to 2-bedroom units will restrict the owner's ability to sell all of the units.

Mr. Leif suggested that a residential subdivision on the property, which is allowable under the zoning bylaw, would be marketable and have a less negative impact to the town. Ms. Landau reiterated that there has been only one entity that has expressed an interest in picking up this project. Mr. Leif emphasized the importance of considering the impact of 30, 3-bedroom units on the parcel. Ms. Gillespie commented that the senior residential units are not selling, and noted that the other over 55 projects in town are only at about 50% occupancy. She suggested that this project be limited to 2-bedroom units to target singles and working couples without children.

Mr. Kane voiced his understanding that the Planning Board had recommended against permitting any further senior overlay districts because of the density of these types of development.

Mr. Byun asked if there is a threshold after lifting the age restriction in terms of density. Mr. Antonellis stated that the bank's analysis indicates that they cannot move forward with the project if it is fewer than 30 units. He also stated that they would likely be agreeable to the stipulation that 2-bedroom units be built as long as they could get the 30 units.

Mr. Antonellis reiterated his position that the proposed change is no more detrimental to the neighborhood than the age restricted project. He stated that the board must only consider the impact to neighborhood when rendering a decision. He also noted that, since none of the units in this project have been sold, the owner is in a unique position to seek this change. Mr. Ginsberg suggested that the board could approve the lifting of the age restriction, with the stipulation that the balance of any remaining construction is limited to 2-bedroom units, and the project is limited to 20 units. Mr. Leif suggested that, since the density bonus was granted in consideration of the age restriction, the board should revisit what the allowable number of units would be without the density bonus.

Mr. Antonellis reiterated that the bank is not in a position to reduce the number of units, and that what is before this board is the question of whether lifting the age restriction is more detrimental to the neighborhood. Mr. Kane noted that, under the original restrictions, it was stipulated that a surviving spouse could continue to live in the development even if they were under 55.

Jeff Leland, 22 Pleasant Street, spoke on behalf of his clients, Mr. & Mrs. Neiber, and indicated that he has letters from seven abutters who are all opposed to this application. He noted that his clients had provided the original applicant with the necessary slope and drainage easements based solely on the fact that the project was to be an over 55 community. He also voiced his opinion that lifting the age restriction and occupancy limit will result in more people and more children, which is clearly more detrimental than a senior community.

Marie Neiber voiced her opinion that it is unfair for the zoning to be decided based on economics.

Charles O'Toole, 39 Whitney Street, commented that there were numerous children raised in the neighborhood and he would love to see more of them back in this area of town. He cited the traffic and other issues on the property when it was a retail store, and voiced his opinion that 30 residential units would not be more detrimental than what previously existed.

Mr. Rutan noted that there are no amenities on this property for children.

Frank DiDonado, 56 Whitney Street, discussed the safety concerns for children, given that this property is completely surrounded by water and located in very close proximity to the railroad tracks.

Kathy Staniunas, 14 Mill Street, shared Mr. DiDonado's concerns about the serious safety issues.

Paul Ditullio, 47 Whitney, asked what the bank has determined is the minimum price these units can be sold at, and voiced his opinion that they won't sell at the \$475,000 price he previously heard. He cautioned about the possibility that the bank could later be back before this board seeking a further concession to make these rental units.

Doug Stone voiced opposition to the proposal, based on his understanding of what the residents intended when they voted for the creation of this senior overlay district at Town Meeting. He also commented that approval will result in a project that is detrimental to the master plan.

Robert Kelly, 58 Whitney Street, voiced objection to allowing for an opportunity for so many children to live in an area that is surrounded by numerous attractive nuisances, where they do not have a safe place to play.

George Pember, 42 Hamilton Road, explained he was the presenter at Town Meeting for the Laurence's project and this project was sold to the town's residents based on the fact that it would have a positive impact to the town. He also noted that, had the project not been delayed in the early stages, it would be occupied by now. He emphasized the fact that the town voted for the project based on the fact that it would be a senior community and have a positive impact to our tax base. He voiced his opinion that there is no way to determine how many children may end up living in the development, but it is certain not to have a positive impact to the town.

Normand Corbin, 35 Whitney Street, asked what the current market conditions are for selling 2-bedroom townhouse units. Mr. Antonellis voiced his expectation that they would completely sell out within 2 ½ years. He also reiterated that the bank will not move forward with this project if it is to remain an over-55 community. He noted that a single family residential community would also result in children.

Members of the board expressed concern that the bank would simply flip the property if this petition is granted, which could result in other changes to the project. Mr. Antonellis agreed to the stipulation that a flip cannot take place unless the applicant comes back to this board. Mr. Ginsberg voiced his understanding that this board cannot put in any stipulation on alienation of ownership.

Mr. Neiber reiterated that this development could not have happened without the easement that he granted, and that he did so only because it was to be an over 55 community. He also stated that he is not convinced that the applicant does not have a market for an over 55 community. He also commented that any project on the

parcel other than an over 55 community will result in a negative impact to town finances, services, and schools.

Mr. Leland voiced his opinion that the comments made and facts presented do support the position that removing the restriction will result in a project that is more detrimental than the age-restricted project that was approved. Mr. Antonellis disagreed, and commented that simply the potential increase in the number of occupants is not sufficient cause to deny the request. Chairman Rand asked if there is to be any further negotiation with the Planning Board. Mr. Antonellis reiterated that the applicant is acting within his right by seeking approval from this board, and he does not feel it is appropriate to negotiate with the Planning Board. Mr. Kane commented about the need to address the safety hazards for children. Mr. Antonellis noted that the hazards currently exist on what is an abandoned property. Ms. Landau stated that it is the responsibility of any owner to prevent misuse of an attractive nuisance, and that they could be held civilly liable for failing to do so.

Ms. Gillespie questioned the ability to offer a property for sale with an occupancy restriction. Tim Shay noted that there are currently 4 townhouses for sale behind the senior center that are listed at a selling price in the low \$400,000 range. He commented that the \$450,000 - \$475,000 price is too high for the current market conditions.

Mark Rutan made a motion to close the hearing. Ms. Joubert explained that the board can either choose to close the hearing and she will prepare a draft decision for consideration, or the hearing can be continued to next month. Members of the board agreed that they would prefer to continue the hearing to determine if more information is needed.

Mark Rutan withdrew his motion.

Richard Kane made a motion to continue the hearing to November 24, 2009 at 7:00PM. Mark Rutan seconded, vote unanimous.

DECISIONS:

73-85 Main Street - Ms. Joubert noted that this hearing had opened prior to Mr. Byun joining the board, so it is necessary to appoint a voting member. Chairman Rand appointed Dan Ginsberg as voting member. Mr. Ginsberg voiced his opinion that there is no real reason not to approve. Mr. Rutan indicated that the applicant has gone out of their way to work with the town on the new design, and he would support approval. Ms. Ginsberg and Mr. Byun agreed.

Mark Rutan made a motion to grant a variance to reduce the front setback to three feet. Richard Kane seconded, vote unanimous.

Mark Rutan made a motion to grant special permit with site plan review per the drawings as submitted Oct. 23, 2009 with the restrictions as noted in the DRC letter

dated Oct. 27th, comment letter from the Fire Chief, and the Groundwater Advisory Committee. Richard Kane seconded, vote unanimous.

276 West Main Street and 290 West Main Street - Mr. Byun voiced support of the proposed duplex development, and noted that this project will improve the neighborhood without any adverse affect. He also noted that there were no abutters present to voice opposition.

Gerry Benson made a motion to grant a special permit to allow construction of a duplex in a Residential C district. Richard Kane seconded, vote unanimous.

Gerry Benson made a motion to grant a variance to allow construction of a duplex within a Groundwater Overlay district. Mark Rutan seconded, vote unanimous.

Gerry Benson made a motion to grant a variance for the retaining wall to allow for the reduction of the side yard setback from 15 feet to zero feet on lots 3,4,and 5 based on the topography of the lot. Mark Rutan seconded, vote unanimous.

23 Whitney Street - Mr. Kane asked about the grounds for approval, and it was noted that the topography and shape of the lot create the hardship by which approval can be granted. Members of the board agreed that the proposed construction will be an upgrade to the building and improvement to the neighborhood.

Mark Rutan made a motion to grant a variance to allow a three family structure in a GR zone based on the shape of the lot. Richard Kane seconded, vote unanimous.

Mark Rutan made a motion to grant a variance to allow for a multifamily dwelling on a lot with less than the required 20,000 square feet based on the topography of the lot. Richard Kane seconded, vote unanimous.

Mark Rutan made a motion to grant a special permit as required under the Groundwater protection to allow for a multifamily dwelling. Richard Kane seconded, vote unanimous.

167 Main Street - Mr. Kane voiced support of the proposal. Mr. Rutan agreed, and noted that the lot is extremely large relative to the size of the sign.

Richard Kane made a motion to grant a variance to allow for an increase in the signage from 32 to 48 square feet at 167 Main Street. Gerry Benson seconded, vote unanimous.

EXECUTIVE SESSION - Richard Kane made a motion to enter into Executive Session and to return to regular session at the conclusion of the discussion. Results of the roll call vote on the motion were as follows:

Richard Kane - yes
Byun Chan - yes
Gerry Benson - yes

Dan Ginsberg - yes
Mark Rutan - yes
Richard Rand - yes

Ms. Joubert explained that the board's decision to grant a variance for the project on Ball Street has been appealed by one neighbor. She noted that, when a neighbor/abutter appeals a decision, it is Town Counsel's opinion that the abutter and the applicant should be allowed to settle it between themselves and that the town should not get involved in the dispute. Ms. Joubert explained that Town Counsel will need to submit a document to the court indicating that we do not choose to defend the case in court.

Richard Kane made a motion to take the position as suggested by Town Counsel. Mark Rutan seconded, vote unanimous.

Results of the roll call vote to leave Executive Session and return to regular session were as follows:

Richard Kane - yes
Byun Chan - yes
Gerry Benson - yes
Dan Ginsberg - yes
Mark Rutan - yes
Richard Rand - yes

The Board returned to regular session.

Review Minutes of the Meeting of August 25, 2009 - Mark Rutan made a motion to approve the Minutes of the Meeting of August 25, 2009 as amended. Gerry Benson seconded, vote unanimous.

Country Candle Project - Mr. Rutan asked Ms. Joubert to investigate how many children are generated through the multi-family developments in town, and to forecast what those numbers might be if the project were a single family residential development.

Adjourned at 10:44PM.

Respectfully submitted,
Elaine Rowe
Board Secretary