

TOWN OF STOW PLANNING BOARD

Minutes of the November 15, 2005, Planning Board Meeting.

Present: Planning Board Members: Bruce E. Fletcher, Malcolm S. FitzPatrick, Ernest E. Dodd and Laura Spear

Associate Member: Donna M. Jacobs (Voting Associate)

Planning Coordinator: Karen Kelleher

The Meeting was called to order at 7:00 PM.

PUBLIC HEARING – ZONING BYLAW AMENDMENT – SECTION 3.9 – NON-CONFORMING USES AND STRUCTURES

At 7:00 PM, the Public Hearing continuance to consider amendment to Section 3.9 of the Zoning Bylaw. Karen Kelleher reported that because the amendments drafted by Town Counsel were significantly different than the initial draft, it was decided that a new public hearing should be advertised. A public hearing to consider proposed amendments to Section 3.9 (*Non-Conforming Uses and Structures*) as well as Section 3.8.1.10 (*Erosion Control*) and Section 6.2 (*Common Driveways*) is scheduled for December 6, 2005.

Ernie Dodd noted that the draft Town Counsel provided is what the Board is looking for and suggested that the proposal for which this Public Hearing was scheduled, should be withdrawn. All Board Members agreed.

Ernie Dodd moved to close the Public Hearing. The motion was seconded by Bruce Fletcher and carried by a unanimous vote of four members present (Bruce Fletcher, Malcolm FitzPatrick, Ernie Dodd and Laura Spear).

HERITAGE LANDSCAPE INVENTORY PROGRAM – FREEDOM'S WAY RECONNAISSANCE SURVEY

Karen Kelleher reported that the Historical Commission is looking for a letter of support for their Application to the Heritage Landscape Inventory Program – Freedom's Way Reconnaissance Survey. If awarded, the grant would provide free technical assistance from staff at Department of Conservation and Recreation and volunteers from the Freedom's Way Heritage Association, as well as expertise of professional assistance. Karen also reported that Karen Gray of the Historical Commission advised that this inventory would provide a resource to the Commission in their ongoing efforts to preserve historic landscapes. Karen explained that the grant would only result in an inventory, not a bylaw.

Laura Spear noted that the Board previously provided a letter of support for registration designating Freedom's Way a state and national heritage area and recommended that the Board forward a letter of support for the grant application. A majority of the Board Members present agreed (Malcolm FitzPatrick, Laura Spear and Ernie Dodd).

MINUTE MAN PROPERTY, BOXBORO ROAD

Members discussed the Notice of Right of First Refusal on the Minute Man Property.

Laura Spear reported that the School Building Committee scheduled a working meeting at 8:00 AM tomorrow (November 16, 2005) to review a conceptual plan similar to the Cushing Mixed Use Concept Plan. Larson Associates is working on the concept plan to include a mixture of uses, including a school site, affordable housing, market rate housing and fields. The final version of the Concept Plan should be done by November 21 or November 22, 2005.

Laura said it may be premature for the Planning Board to make a recommendation on the Minute Man property until we have the concept plan.

Malcolm FitzPatrick said he likes the proposed plan for an Active Adult Neighborhood on this property. The plan had all of what should be in a layout for high-density development. It includes affordability, proper setbacks and privacy. He said he would hate to deny a developer whom he thought would do a good job.

Malcolm feels that the Minute Man property is a poor site for a school. It is a noisy area and has bad access. He said we should not be buying the property just because it is under Chapter 61. The Town should go out and find the best site for a school.

Laura said she thinks the School Building Committee did what Malcolm is suggesting. They looked at 12 properties, including the property on the corner of Route 117 and Hudson Road and the Minute Man property.

Malcolm said there are other properties that the Town should consider taking by Eminent Domain. If the Town is going to spend \$30 million on a new school, it should be on a good site. He said another site that should be considered is the Future Electronics site, noting that just because it is in Bolton is not a good reason to discount it.

Laura noted that the Future Electronics site is a Superfund Site. Malcolm responded that it wasn't a major superfund site, noting it was a leak that has been remediated.

Laura said she would like to see the concept plan before making a decision.

Bruce Fletcher said he agrees with most of what Malcolm said, except for the Future Electronics Site. Bruce doesn't think the Town should use Industrial Zoned property for a School.

Ernie Dodd said he agrees with Malcolm. Ernie does not believe we need a new school, which is cost prohibitive. He thinks that we should work with the existing school sites, as suggested in the Petition.

Laura Spear said she has not seen the Petition and questioned where the \$10 million figure came from. Laura also stated that she knows there is a problem and something has to be done.

All agreed that something has to be done. Ernie Dodd said something can be done at the existing sites.

It was agreed that this issue will be further discussed on December 6th, after members have the opportunity to review the School Building Committee's report.

PROPOSED ZONING BYLAW AMENDMENT – EROSION CONTROL

It was noted that the intent of this proposed amendment is to be consistent with requirements for a NPDES Permit.

Members then reviewed Malcolm's comments on the proposed bylaw amendment. He is concerned that the bylaw, as written, provides four ways that one could clear strip or fill six inches or more of one acre of land. He thought the Board was going to require a special permit, if any land (other than farmland) greater than one acre was to be stripped and/or filled. He is concerned that one could re-contour five acres of land for a large house, under a building permit, and not come under any restriction for run-off control.

Malcolm FitzPatrick moved to remove the words “or unless necessarily incidental to construction on the premises under a currently valid building permit” from Section 3.8.1.10, Subsection 3. The motion was seconded by Laura Spear and carried by a unanimous vote of four members present (Bruce Fletcher, Malcolm FitzPatrick, Ernie Dodd and Laura Spear).

Malcolm FitzPatrick moved to change the words “clear-stripped or be filled six inches or more so as to destroy existing vegetation” to read “altered, by stripping or filling, so as to potentially cause erosion”. Laura Spear is concerned about unintended consequences. She is concerned that you might be taking away the option for to do a subdivision without the need for a Special Permit, noting that Town Counsel, when drafting the Inclusionary Bylaw advised us, that we need to provide an option for a Subdivision without a Special Permit. Karen noted that any subdivision would result in more than an acre of disturbance in order to construct the roadway, associated infrastructure and lot development. She also noted that the Board has the opportunity to require erosion control measures as part of a Subdivision. Malcolm said that there could be an option for a subdivision without a special permit because one could do a subdivision layout road that is less than an acre of land and then sell the lots. Ernie is not concerned about the amount of exposure for subdivisions. By a vote of 1 in favor (Malcolm FitzPatrick), 2 opposed (Ernie Dodd and Laura Spear) and one abstention (Bruce Fletcher), the motion did not carry.

Malcolm FitzPatrick moved to remove the words six inches or more from the first sentence. The motion was not seconded. Laura Spear questioned if the proposal would be defensible because it would be open to interpretation. Bruce Fletcher agreed with Laura, noting it would prevent one from loam and seeding their site. Ernie Dodd said enforcement would be difficult. Malcolm said, under the existing bylaw, one could clear $\frac{3}{4}$ of an acre and fill $\frac{1}{4}$ of an acre and not need a Special Permit. Bruce Fletcher said he doesn't have a problem with that, as long as erosion control measures are in place. Malcolm said he doesn't like the loophole. Laura said the bylaw would be vague. The 6" in the existing bylaw can be measured.

Bruce Fletcher reviewed the Stormwater Permit Basics and suggested amending the new Subsection 7 to read "Before a project disturbs one acre or more of land, either by itself or as part of a larger development; and storm water could run off the site in a directed manner (via a culvert, ditch, storm sewer system, roadway, storm dug channel, etc.) and reach a surface water (pond, stream, wetland, etc.), a copy of the Stormwater Pollution Prevention Plan (SWPP) and the Notice of Intent filed with the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Planning Board."

Malcolm questioned the Board if the Board wants to be preventative and require a Special Permit or to let one disturb an acre of land and have an enforcement issue. Bruce said that a Special Permit is time consuming and expensive. If the Board can be sure that the environment is protected without the need for a Special Permit, we should. Laura Spear said she is against the requirement for a Special Permit for smaller projects.

Malcolm said the requirement for a Special Permit and site EPA requirements are not in place and one fails to provide Erosion Control, they would need to come to the Planning Board for an Erosion Control Special Permit. He is concerned about someone wanting to grade a three-acre site just because they think it would look good.

Laura Spear said we need a benchmark in place, whether it is 6" or other.

Laura Spear moved to change the proposed language for a new subsection 7 to read:

"Before a project disturbs one acre or more of land, either by itself or as part of a larger development; and storm water could run off the site in a directed manner (via a culvert, ditch, storm sewer system, roadway, storm dug channel, etc.) and reach a surface water (pond, stream, wetland, etc.), a copy of the Stormwater Pollution Prevention Plan (SWPP) and the Notice of Intent filed with the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Planning Board."

The motion was seconded by Malcolm FitzPatrick and carried by a vote of three in favor (Ernie Dodd, Malcolm FitzPatrick, Laura Spear) and one abstention (Bruce Fletcher).

PROPOSED ZONING BYLAW AMENDMENT SECTION 3.9 – NON-CONFORMING USES AND STRUCTURES

Members reviewed the Draft Bylaw Amendment prepared by Town Counsel.

Malcolm FitzPatrick moved to accept the changes Town Counsel's draft Bylaw Amendment to Section 3.9 to read:

3.9 NON-CONFORMING USES AND STRUCTURES

3.9.1 A pre-existing NON-CONFORMING USE or STRUCTURE may continue. However, other than Wireless Service Facilities, which may not be altered or extended unless specifically allowed in Section 3.11 of the Bylaw, no lawful pre-existing NON-CONFORMING USES or STRUCTURES may be extended or altered except in conformance with Sections 3.9.6 and 3.9.7 below. All applications for extensions and/or alterations shall include a scaled floor plan of the STRUCTURE(S) in question showing FLOOR AREA and ground coverage prior to and following the proposed changes in order to determine the degree to which the use has expanded from its original size. All applications for such special permits shall include such information and plans as required for a special permit as required in Section 9.2. Applicants shall also comply with the following site planning standards for "NON-CONFORMING USES or STRUCTURES":

- 3.9.1.1 (Unchanged)***
- 3.9.1.2 (Unchanged)***
- 3.9.1.3 (Unchanged)***
- 3.9.1.4 (Unchanged)***
- 3.9.1.5 (Unchanged)***
- 3.9.1.6 (Unchanged)***

- 3.9.2 (Unchanged)**
- 3.9.3 (Unchanged)**
- 3.9.4 (Unchanged)**
- 3.9.5 (Unchanged)**

3.9.6 *Changes of Use and Limitation on Intensity and Size of Use - Other Than Single or Two-Family Residential Dwellings:*

3.9.6.1 *As provided in G. L. c. 40A, sec. 6, a lawfully preexisting nonconforming use and/or structure, other than a single or two-family residential dwelling, may be reconstructed, altered or extended only if:*

- 1. *said reconstruction, alteration or extension itself conforms with all the provisions of the Zoning Bylaw;***
- 2. *there is a finding by the Board of Appeals that such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use;***
- 3. *that said extension, alteration or change is in accordance with the guidelines noted below; and***
- 4. *that the Board of Appeals grants a special permit as provided in Section 9.2.***

3.9.6.2 *Guidelines for Review of Extensions, Alterations or Changes to Preexisting, Nonconforming Uses and Structures: Recognizing the need to provide guidelines for determining relative impacts upon the Town and the immediate neighborhood from an expansion, alteration or change of preexisting nonconforming uses and structures, and recognizing the basis and consistent principles of zoning with respect to minimizing nonconforming uses and structures, the following shall apply to the review of special permit applications under this Section:*

- 1. *the Board of Appeals shall encourage extensions, alterations or changes to nonconforming structures and uses toward greater, if not complete, conformance with the provisions of the Zoning Bylaw and to reduce the degree of nonconformity;***
- 2. *the Board of Appeals shall not encourage the expansion of a nonconforming structure or use as measured by either the:***
 - a) *amount of floor space or land area used, or***
 - b) *volume of activity, including but not limited to an increase in the intensity of use and/or a change in the nature or purpose of the use;***
- 3. *the Board of Appeals shall prohibit the expansion of nonconforming structures and uses unless there will be no demonstrable adverse impacts on abutting properties and those properties that generally***

characterize the neighborhood or locus within which the expansion is sought, and;

- 4. the Board of Appeals shall not encourage the expansion of nonconforming structures and uses if the expansion will negatively impact the Town of Stow's ground or surface waterbodies.*

3.9.6.3 Table of Presumptively Not More Detrimental Extensions, Alterations, or Changes to Preexisting, Nonconforming Uses and Structures:

An extension, alteration or change to a lawfully preexisting nonconforming use or structure shall be presumed not to be substantially more detrimental to the neighborhood if the guidelines of Section 3.9.6.2 are considered and if the extension, alteration or change also is in compliance with the following:

TABLE OF PRESUMPTIVELY NOT MORE DETRIMENTAL EXTENSIONS, ALTERATIONS, OR CHANGES TO OTHER THAN SINGLE OR TWO-FAMILY RESIDENTIAL DWELLINGS

<i>Issue</i>	<i>Presumptively Allowable Changes, Alterations, or Extensions</i>
<i>If maximum floor area ratio requirements are exceeded and/or minimum open space requirements are not met.</i>	<i>The extension, alteration, or change does not:</i> <ol style="list-style-type: none"><i>1) increase the floor area ratio requirements;</i><i>2) decrease the existing floor area ratio and/or;</i><i>3) results in an increase of the open space requirements of Section 4.4.</i>
<i>If the structure or use exceeds current parking or loading area requirements.</i>	<i>The requirements of Section 7 of the Zoning Bylaw are met or if the Board of Appeals determines that the existing use and proposed expansion or site conditions do not warrant the number of parking spaces required by Section 7.3.3.</i>
<i>If the structure or use exceeds, or is in violation of, or violates any other provision of the Zoning Bylaw.</i>	<i>The extension, alteration, or change meets the guidelines specified in Section 3.9.6.2 above.</i>

3.9.7 Alteration, Reconstruction, Extension or Structural Changes to Preexisting Nonconforming Single and Two-Family Residential Structures.

- 3.9.7.1 As provided for in G. L. c. 40A sec. 6, a nonconforming single or two-family dwelling or structure accessory thereto may be altered, reconstructed, extended or otherwise structurally changed provided that:**

- 1. the proposed alteration, extension or structural change itself conforms to the requirements of the present Bylaw, and does not intensify any existing**

non-conformities or result in any additional non-conformities, in which event the Building Inspector may issue a building permit and an application to the Board of Appeals need not be made; or

- 2. the proposed alteration, extension or structural change itself does not conform to the requirements of the present Bylaw, and does intensify existing non-conformities or results in additional non-conformities, in which event a Petition for Special Permit must be made to the Board of Appeals, and the Board of Appeals must find that:*
 - a) there is no substantial increase in the nonconforming nature of said structure; and*
 - b) such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use.*

3.9.7.2 *In determining the meaning of the phrases “increase the nonconforming nature of said structure” and “substantially more detrimental to the neighborhood,” the following shall apply to the review of applications subject to this provision to alter, reconstruct, extend or structurally change a preexisting nonconforming single- or two-family residential structure:*

- 1. The Board of Appeals must make a determination as to the particular respect or respects in which the existing structure or lot does not conform to the requirements of the present Bylaw;*
- 2. Should the Board of Appeals conclude that the proposed change would substantially increase the nonconforming nature of the structure or lot, the applicant will not be entitled to the issuance of a special permit;*
- 3. If the Board of Appeals determines that the proposal will not substantially increase the nonconforming nature of the structure or the lot, the applicant will also be required to show that the change will not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood;*
- 4. If the Board of Appeals determines that the proposal will be more substantially detrimental to the neighborhood, the special permit sought will be denied unless the Board of Appeals determines that a special permit can be approved with conditions that would make the change substantially not more detrimental, in which case the Board of Appeals may approve a special permit with such conditions.*
- 5. For the purposes of this Section, determination of “substantially more detrimental to the neighborhood” shall include consideration of and impacts to, the general and immediate neighborhood from the resulting height, building coverage, impervious coverage, and width of the altered, reconstructed, extended or structurally changed structure. Additionally, a determination whether an altered, reconstructed, extended or structurally changed structure will be “substantially more detrimental to the*

neighborhood” shall include the resulting impacts to views and vistas from abutting properties and public and private ways, increase in traffic, noise, surface water runoff and related site planning issues.

The motion was seconded by Laura Spear and carried by a unanimous vote of four members present (Bruce Fletcher, Malcolm FitzPatrick, Ernie Dodd and Laura Spear).

PROPOSED ZONING BYLAW AMENDMENT SECTION 6.2.7 – COMMON DRIVES

Members discussed the proposed amendment to Section 6.2.7. Malcolm said he has a problem in allowing five lots off of a common driveway without additional standards. He feels that it would technically be a subdivision under another name. He said that a subdivision protects the Town and you can't rationally have a 12' road to serve 5 homes and get around the Subdivision Laws. He feels that you would be pulling land out of the subdivision process and giving access to two additional lots with no as-built plan, no covenant and providing access to other lots that would otherwise not be acceptable. He feels that a common drive to serve 5 lots should be by special permit and not by right.

Karen Kelleher noted that the common drive does count as frontage. Laura Spear suggested adding the words “as part of an approved subdivision” to address Malcolm's concern. Malcolm also noted that there should be standards for a common driveway serving 5 lots.

Laura moved to add amend the proposed new Subsection 7 to read:

“6.2.7 As part of an approved subdivision or special permit granted by the Planning Board, the number of LOTS served by a common drive may be increased to five (5).”

The motion was seconded by Ernie Dodd and carried by a unanimous vote of four members present (Bruce Fletcher, Ernie Dodd, Malcolm FitzPatrick and Laura Spear).

The meeting adjourned at 10:00 PM.

Respectfully submitted,

Karen Kelleher
Planning Coordinator