

## **TOWN OF STOW PLANNING BOARD**

Minutes of the October 10, 2006, Planning Board Meeting.

Present: Planning Board Members: Ernest E. Dodd, Laura Spear, Kathleen Willis and Leonard Golder

Planning Coordinator: Karen Kelleher

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

### **MINUTES**

September 19, 2006 – ***Laura Spear moved to approve minutes of the September 19, 2006 meeting, as amended. The motion was seconded by Kathleen Willis and carried by a vote of four members present (Ernie Dodd, Laura Spear, Kathleen Willis and Leonard Golder).***

September 26, 2006 – ***Laura Spear moved to approve minutes of the September 26, 2006 meeting, as amended. The motion was seconded by Kathleen Willis and carried by a vote of four members present (Ernie Dodd, Laura Spear, Kathleen Willis and Leonard Golder).***

### **ANR PLAN, PINE POINT ROAD (PARCEL 48 ON ASSESSORS MAP SHEET U1).**

Jack and Georgi Smith met with the Board to discuss their application for Endorsement of Plan Believed Not to Require Approval.

Jack Smith explained to the Board that the existing single family dwelling is for sale. They have had inquiries about the house from people who do not want the garage. Therefore, they would like to subdivide the garage from the house lot. Jack Smith further explained that the garage lot would not be considered a building lot and would give them the option of selling the property with or without the garage. He explained that this is a hardship, noting they are being assessed \$30,000.00 for the 30' x 27' barn.

Members reviewed the Plan, which shows the property divided into two parcels: Parcel A, a 83,373 sq. ft. parcel with a single family dwelling, and Parcel B, a 9,217 sq. ft. parcel with the garage. Members noted:

The Plan does not comply with Section 2.1.2.19 of the Town of Stow Subdivision Rules and Regulations, which requires sufficient information to show that each building lot complies with the Zoning Bylaws:

- Parcel A - The Plan increases the non-conformity of the house lot (Section 4.3.2.4, Lot Width, of the Zoning Bylaw).
- Parcel B – The Plan creates a non-conforming parcel with no status under zoning. The Plan shows:
  - Insufficient lot area (Section 4.4 of the Zoning Bylaw requires a minimum of 65,340 sq. ft.) ;
  - No frontage (Section 4.4 of the Zoning Bylaw requires at least 200' of frontage.);
  - A property line setback violation (Section 4.4 of the Zoning Bylaw requires a 25' minimum side yard setback); and

- A use violation (Section 3.2. of the Zoning Bylaw), because the existing barn would no longer be accessory to the single family dwelling.

Karen Kelleher reported that she consulted with Town Counsel and he advised that the only instance where the Board could endorse the plan is if both structures existed prior to the Town's adoption of the Subdivision Control Law.

Karen Kelleher explained that the Planning Board has no authority to waive requirements of the Zoning Bylaw. Members also noted concern about creating a non-conforming use, as the garage will no longer be accessory to the single family dwelling.

Ernie Dodd reminded Jack Smith of earlier conversations between Mr. Smith, Ernie Dodd and Karen Kelleher, where it was suggested that he change the plan to show Parcel B as an exclusive use easement for the Barn

Georgi Smith asked if the Board could endorse the plan if Parcel B were to be conveyed to an abutting lot. Members responded yes, provided they obtained a Special Permit from the Zoning Board of Appeals to increase the non-conformity of the house lot and a variance from the Zoning Board of Appeals for the property line setback for the barn.

***Laura Spear moved to deny the Application for Endorsement of Plan Believed not to Require Approval for the following reasons:***

- ***The Plan does not comply with Section 2.1.2.19 of the Town of Stow Subdivision Rules and Regulations, which requires sufficient information to show that each building lot complies with the Zoning Bylaws:***
  - ***Parcel A - The Plan increases the non-conformity of the house lot (Section 4.3.2.4, Lot Width, of the Zoning Bylaw).***
  - ***Parcel B – The Plan creates a non-conforming parcel with no status under zoning. The Plan shows:***
    - ***Insufficient lot area (Section 4.4 of the Zoning Bylaw requires a minimum of 65,340 sq. ft).***
    - ***No frontage (Section 4.4. of the Zoning Bylaw requires at least 200' of frontage);***
    - ***A property line setback violation (Section 4.4. of the Zoning Bylaw requires a 25' minimum side yard setback); and***
    - ***A use violation (Section 3.2 of the Zoning Bylaw), because the existing barn would no longer be accessory to the single family dwelling.***
- ***The Plan does not appear to show the location of wells and septic systems within one hundred fifty feet (150') of the new lot lines as, required in Section 2.1.2.12 of the Town of Stow Subdivision Rules and Regulations.***
- ***The Plan does not include a notice of any decisions by the Zoning Board of Appeals, including but not limited to variances and exceptions regarding the land or any buildings thereon or a statement that no such decisions exist, as required in Section 2.1.2.13 of the Town of Stow Subdivision Rules and Regulations.***

***The motion was seconded by Kathleen Willis and carried by a unanimous vote of four members present (Ernie Dodd, Laura Spear, Kathleen Willis and Leonard Golder).***

## **TAYLOR ROAD PCD**

Rich Williams of Hayes Engineering, representing Habitech, Inc., met with the Board to request an amendment to the Special Permit Decision issued by the Board on February 23, 2005, for the Taylor Road Planned Conservation Development. He said when they filed a building permit application, the Building Inspector found that they did not meet the side yard setback requirements. Rich Williams noted that the Special Permit granted relief for the front setback but not the side setback. The side setback requirement is 50' from the open space. He noted that, during the public hearing, they discussed the fact that they provided a sliver of open space along the side of the lots in order to maximize the open space and were under the understanding that the Board would grant relief from the side yard setback. He also asked that the Board clarify the decision relative to the front yard setback.

Karen Kelleher reported that Habitech Inc. is also required to post a bond prior to issuance of a building permit. The Board's Consulting Engineer, Susan C. Sullivan, recommends a bond amount of \$61,000.00 from Habitech, Inc. for the Phase I – Lots 1 and 2, and \$95,000.00 for Phase 2 – lots 3 and 4. Karen Kelleher further reported that she has been working with Habitech's attorney on an acceptable form for the bond. In the mean time, in order to obtain a building permit clearance from the Planning Board, Habitech submitted a check in the amount of \$61,000.00 to be held in escrow, pending receipt of a performance guarantee in acceptable form, at which time the check will be returned to Habitech.

***Laura Spear moved to:***

- 1. Find that the request for a waiver in the reduction in the setback requirements from the Open Land is in keeping with the approved Planned Conservation Development Plan in that the lots were designed to maximize the amount of open land and buffer to abutting properties and that the waiver is consistent with the minimum side yard and rear yard setback requirements for a Planned Conservation Development Plan.***
- 2. Authorize a reduction in the side yard setback requirement of Section 8.5.7.2 of the Zoning Bylaw for building setback requirements from the boundary line of the Open land as follows:***
  - Lots 1 through 5 – The side yard building setback requirement from boundary line of the Open Land is reduced from 50 feet to 20 feet.***
  - Lots 1 and 3 – The rear yard building setback requirement from boundary line of the Open Land is reduced from 50 feet to 20 feet.***
- 3. Clarify Section 8.22 of the Decision, "Finding: In accordance with Section 8.5.7.3 of the Bylaw, the Board finds that setbacks along the frontage of the Site, as shown on the plan, are consistent with existing homes in the neighborhood and will not pose public safety problems," by authorizing a reduction in the required setback of an existing public way from 100 feet to the setbacks as shown on the approved Planned Conservation Plan.***
- 4. Find these changes to be considered a minor modification not requiring a public hearing.***

***The motion was seconded by Kathleen Willis and carried by a unanimous vote of four members present (Ernie Dodd, Laura Spear, Kathleen Willis and Leonard Golder).***

***Laura Spear moved to establish a bond amount of \$61,000.00 from Habitech, Inc. for the Phase I – Lots 1 and 2 of the Taylor Road Planned Conservation Development, as recommended by the Board's Consulting Engineer, and to accept a check made payable to the Town of Stow to be held in escrow pending receipt of a performance guarantee in acceptable form, at which time the check will be returned to Habitech. The motion was***

***seconded by Kathleen Willis and carried by a unanimous vote of four members present (Ernie Dodd, Laura Spear, Kathleen Willis and Leonard Golder).***

***Laura Spear moved to establish a bond amount of \$95,000.00 from Habitech, Inc. for the Phase 2 – Lots 3, 4 and 5 of the Taylor Road Planned Conservation Development, as recommended by the Board's Consulting Engineer. The motion was seconded by Kathleen Willis and carried by a unanimous vote of four members present (Ernie Dodd, Laura Spear, Kathleen Willis and Leonard Golder).***

## **ZONING BYLAW AMENDMENTS**

### **Lighting**

Greg Troxel met with the Board to discuss the next step to go forward with the Light Pollution Study Sub-Committee's recommended zoning bylaw amendments. Members explained that they anticipate zoning bylaw amendments to be put forth at the Annual Town Meeting and will hold a public hearing along with other proposed zoning bylaw amendments including the proposed Mixed Use Village Overlay Districts. Greg Troxel said the only problem area may be relative to agricultural uses. They have had a discussion with one of the farmers concerning lighting for greenhouses. Greg Troxel further noted that once the bylaw amendments are adopted, the Light Pollution Study Sub-Committee would like to start reviewing existing violations.

The Board agreed to forward the proposed bylaw amendments to Town Counsel for review, rather than waiting until the warrant is prepared. Karen Kelleher recommended also sending the proposed bylaw to the Attorney General for input.

## **SUBDIVISION RULES AND REGULATIONS**

### **Section 7.9 - Stormwater Management**

Members reviewed the draft bylaw amendment prepared by Ernie Dodd. Bruce Fletcher said he likes the proposed bylaw and thinks it will work. It meets his goal to follow one standard and is consistent with DEP's Stormwater Management Guidelines.

Members generally agreed with the proposed changes with some minor changes and will further consult with Sue Sullivan, the Board's Consulting Engineer, on the proposed Section 7.9.2.1.d with regard to soil groups.

### **Section 1.7**

Members agreed to minor changes and to add the following language to Section 1.7: The Board reserves the right to determine which are the applicable standards, depending upon the specific set of circumstances.

### **Section 5.2.2 (Proper Bond)**

Members reviewed the proposed amendment to Section 5.2.2, as drafted by Ernie Dodd, and agreed to work the proposed changes into the existing language and to add the following language:

The Amount of the bond to be released shall be no more than 75% of the total bond amount, until such time the final as-built plans are accepted by the Planning Board.

It was also agreed to add a standard form for each type of performance guarantee to the appendix.

### **OPEN SPACE AND RECREATION PLAN**

Members agreed to review the Draft Open Space and Recreation Plan at the next scheduled meeting.

### **EXECUTIVE SESSION**

Laura Spear moved to enter into Executive Session for purposes of discussion pending litigation and to adjourn at the conclusion of executive session. The motion was seconded by Kathleen Willis and carried by a unanimous roll call vote of four members present (Ernie Dodd, Laura Spear, Kathleen Willis, and Leonard Golder).

The meeting adjourned at 10:30 PM.

Respectfully submitted,

Karen Kelleher  
Planning Coordinator