

TOWN OF STOW PLANNING BOARD

Minutes of the May 22, 2007, Planning Board Meeting.

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

Planning Coordinator: Karen Kelleher

The Meeting was called to order at 7:00 p.m.

MINUTES

Laura Spear moved to approve minutes of the April 10, 2007 meeting, as amended. The motion was seconded by Kathleen Willis and carried by a vote of three in favor (Ernie Dodd, Laura Spear and Kathleen Willis) and one abstention (Steve Quinn)

PLANNING BOARD CONSULTING ENGINEER

Members reviewed the proposal, dated April 26, 2006, from PLACES Site Consultants, Inc. for Professional Planning and Engineering Review Services. It was noted that the Board's current Consulting Engineer, Susan C. Sullivan, is now working full time with PLACES Site Consultants, Inc. She proposes to continue her role as the Planning Board's engineering consultant through PLACES Consultants, Inc. Members noted that they support Sue continuing her services through PLACES, as she knows Stow's Bylaws and Regulations inside and out and the Board has a good relationship with her. It was also noted that this proposal will provide Stow with the ability to have alternate professionals available in the event of a scheduling conflict, as well as direct access to profession land surveyors and landscape architects.

Laura Spear moved to accept the proposal from PLACES Site Consultants Inc., for Professional Planning and Engineering Review Services to the Stow Planning Board. The motion was seconded by Kathleen Willis and carried by a unanimous vote of four members present (Ernie Dodd, Laura Spear, Kathleen Willis and Steve Quinn). Len Golder was not present at this time.

Len Golder arrived at this point in the meeting.

ELECTIONS

Chairman

Laura Spear moved to appoint Ernie Dodd as Chairman. The motion was seconded by Len Golder and carried by a vote of four in favor (Laura Spear, Kathleen Willis, Len Golder and Steve Quinn) and one opposed (Ernie Dodd).

Vice Chairman

Kathleen Willis moved to appoint Laura Spear as Vice Chair. The motion was seconded by Len Golder and carried by a vote of four in favor (Ernie Dodd, Kathleen Willis, Len Golder and Steve Quinn) and one abstention (Laura Spear).

Clerk

Kathleen Willis moved to appoint Len Golder as Clerk. The motion was seconded by Laura Spear and carried by a unanimous vote of five members present (Ernie Dodd, Laura Spear, Kathleen Willis, Len Golder and Steve Quinn).

ANR Plan Endorsement

Laura Spear moved to appoint Kathleen Willis and Karen Kelleher to endorse ANR Plans. The motion was seconded by Len Golder and carried by a unanimous vote of five members present (Ernie Dodd, Laura Spear, Kathleen Willis, Len Golder and Steve Quinn).

MAGIC and MAPC Liaison

Len Golder moved to appoint Donna Jacobs as the Planning Board's liaison to MAGIC and MAPC. The motion was seconded by Laura Spear and carried by a unanimous vote of five members present (Ernie Dodd, Laura Spear, Kathleen Willis, Len Golder and Steve Quinn).

Master Plan Committee

Laura Spear moved to recommend Ernie Dodd as the Planning Board's representative member to the Master Plan Committee. The motion was seconded by Len Golder and carried by a unanimous vote of five members present (Ernie Dodd, Laura Spear, Kathleen Willis, Len Golder and Steve Quinn).

Community Preservation Committee

Len Golder moved to appoint Laura Spear as the Planning Board's representative member to the Community Preservation Committee. The motion was seconded by Kathleen Willis and carried by a unanimous vote of five members present (Ernie Dodd, Laura Spear, Kathleen Willis, Len Golder and Steve Quinn).

Zoning Board of Appeals Liaison

Laura Spear moved to appoint Steve Quinn as the Zoning Board of Appeals Liaison. The motion was seconded by Kathleen Willis and carried by a unanimous vote of five members present (Ernie Dodd, Laura Spear, Kathleen Willis, Len Golder and Steve Quinn).

Associate Member

Len Golder moved to appoint Malcolm FitzPatrick as an Associate Member. The motion was seconded by Kathleen Willis and carried by a unanimous vote of five members present (Ernie Dodd, Laura Spear, Kathleen Willis, Len Golder and Steve Quinn).

PLANNING BOARD MEMBER'S UPDATES

Meadowbrook Estates (Trefry Lane) – Ernie Dodd noted that the first basin at the Meadowbrook Estates (Trefry Lane) Subdivision is being flooded from Boxboro Road. He will advise the Superintendent of Streets.

Disclosure – Ernie Dodd reported that he is party to a suit against the Town relative to use of the Pine Bluffs property for Recreational purposes. He said that he has no conflict of interest because there is no proposal relative to this property before the Planning Board and will recuse himself if anything comes before the Board. He also noted that he is using the same attorney that represents Bob Collings, who currently has a Definitive Subdivision before the Board. He filed a disclosure letter with the Town Clerk.

Len Golder advised Ernie to always preface any remarks with a statement that he is speaking as a resident and not as a member of the Planning Board.

Community Preservation Committee – Laura Spear reported that the Community Preservation Committee will be forwarding the proposed Affordable Deed Restriction Program, as amended, to DHCD. The Committee is hopeful that the revised program will be accepted by the new administration.

COORDINATOR'S REPORT

- A Joint Boards meeting on Affordable Housing Efforts is scheduled for either June 12 or June 26th.
- Arbor Glen AAN
 - Many complaints were received about hours of operation at the Arbor Glen AAN site. Pulte Homes was contacted and the issue seems to be resolved.
 - Complaints received about using Hudson Road to access one side of the site to the other. Pulte Homes advised they only use Hudson Road to access the well site, which is necessary because an alternative access is not available.
 - The Superintendent of Streets reported damage to Hudson Road. Pulte Homes is aware and will repair.
 - Ernie and Kathleen to meet with Pulte Homes, in response to the Board's letter concerning unit colors
- Cingular Wireless – U. S. District Court will be hearing a Motion for Summary Judgment on July 16, 2007 at 2:00 p.m.
- The Boxborough Cricket Hollow Subdivision (Eldamar Development) Public Hearing is scheduled for June 6, 2007.
- Whitney Homestead – Karen questioned if the Board wants to issue a press release in response to the recent letters to the editor concerning the proposal by Community Resources for Justice.

MEADOWBROOK ESTATES

Ken Kaulbach met with the Board to discuss his plans to construct an emergency access way from Trefry Lane to the Town of Boxborough. He explained that Town of Boxborough will require the connection as a condition of his proposed 16-lot Subdivision (Cricket Hollow) currently before them.

Ken Kaulbach briefly showed a plan (no copy left for the Planning Board file) and explained his proposal to construct a 12' wide strip across the 40' right-of-way. The 12' wide strip will run to the Boxborough property line (approximately 150'). A metal gate with breakthrough locks will be installed at the Town line and will be visible from Trefry Lane. Keys will be provided to emergency departments. The Boxborough portion will be paved and the Stow portion will be gravel – suitable for emergency vehicles. He met with the Supt. of Streets in Boxborough who indicated that they will be responsible for plowing the emergency access road from Boxborough to Trefry Lane in Stow but also noted it would not be a high priority for the Highway Department.

Planning Board Member's comments:

- Is it possible for Boxborough to plow from Stow to Boxborough to alleviate residents concerns about dispersing the gravel onto their property while plowing? Ken Kaulbach said the Boxborough Supt. of Streets was offended by that question and stated he could keep the snow out of the way. Ken Kaulbach said he could pave the emergency access way but understands that Stow does not want it paved.
- Have you looked into using permeable pavers rather than gravel? Ken Kaulbach responded that they are expensive.
- Is there a need for additional tree clearing? Ken Kaulbach stated they need to take out 2 more pines, which will be unobtrusive and could be done in a day.
- Signage? Ken Kaulbach said there should be no need for a sign because a gate will be installed.
- Is there really a need? Can the Boxborough Subdivision be reconfigured for safe access without the need for emergency access?
- Construction standards?
- The natural terrain should be maintained.
- Emergency access should be curved to obscure direct view from Boxborough and Stow.

- The Board suggested using pervious pavers. Ken Kaulbach stated pavers are too costly but would be willing to pave.
- The Board requires a planting plan to block view from property owners.
- Liability for owner of property should be addressed
- Adequate sight lines for emergency vehicles should be addressed.
- There was some discussion as to whether or not the Planning Board can require a modification to the Subdivision because Trefry Lane was accepted as a Town Way. Karen Kelleher will check with Town Counsel.
- Karen Kelleher asked if there will be a need for a Street opening permit from the Highway Dept.

Ken Kaulbach said the Planning Board does not have the right to restrict how he uses the Right of Way. Planning Board Members referred to Section 10.24 of the Decision, which requires that the Plan shall be modified as recommended by the Planning Board. Ken Kaulbach argued that the Decision states the emergency access road "shall be permitted". He does not believe there is a requirement to modify the plan. It was noted that Section 7.5.4 of the Decision states that the Planning Board "shall consider" which does not necessarily mean "shall grant".

Trefry Lane Residents questions and concerns:

- Requested that the two trees, proposed be removed, be tagged. Ken Kaulbach agreed to tag the trees and give 48 hours notice before removal.
- Would like a wooden gate, consistent with existing landscape, installed at the Trefry Lane end of the emergency access way. This would alleviate concern about parking on the emergency access road.
- Concerned about safety for children in the neighborhood. The sight line for emergency vehicles is poor. Will Boxborough Emergency Departments be familiar enough with Trefry Lane?
- The easement merges into the shared driveway. Suggested the proposed driveway be shifted within the right-of-way to avoid the shared driveway. Ken Kaulbach said he doesn't think he can shift the road because he thinks there is some rule that requires it must be straight. Ernie Dodd said it should be acceptable as long as it can accommodate emergency vehicles. Ken Kaulbach said he doesn't think the proposed road will affect the shared driveway.
- Will Boxborough clean up the sand after plowing?
- Want to be assured the right-of-way will not be used as a construction entrance for the Boxborough Subdivision.
- What happens if the emergency access way is not maintained and a fire truck gets stuck?
- Liability – Will the Town assume liability?
- Maintenance – Will the town of Boxborough assume maintenance responsibility and related liability?
- Mailbox area to be relocated?
- Ownership – Materials on the ground, below the surface and in the air with regard to the area of the ROW are the property and ownership of the residence of 61 Trefry Lane.
- ROW must consist of open cobblestones and evergreens screen shall be planted.
- Privacy Screen on Boxborough and Stow Town Line.
- Can the Town ask for a bond?

Planning Board Members agreed to forward a letter to the Town of Boxborough outlining concerns discussed and requesting, at a minimum:

- Is the emergency access road necessary
- Town of Stow will not be responsible for Maintenances

- Construction Detail Plan, acceptable to the Board
- Use of pervious pavers
- Landscape Plan
- Layout of the emergency access road
- Requirement for Gates to be placed at the Trefry Lane end of the emergency access road.
- The natural terrain elevations should be maintained
- The emergency access road should be curved to obscure the view directly between Stow and Boxborough.
- A snow plowing procedure
- Address property owner liability issue
- Prohibit use as a construction entrance
- Correspondence from abutters

PUBLIC HEARING – 566 GLEASONDALE ROAD ACCESSORY APARTMENT

At 8:00 PM, the Public Hearing to consider the application of Diane Mills for a Site Plan Approval for an Accessory Apartment, submitted to the Board on April 27, 2007, under Sections 8.1 and 9.3 of the Stow Zoning Bylaws, was called to order.

Laura Spear moved to waive the reading of the Public Hearing Notice. The motion was seconded by Kathleen Willis and carried by a unanimous vote of five members present (Ernie Dodd, Laura Spear, Kathleen Willis, Len Golder and Steve Quinn).

Diane Mills explained that the original structure, a 3-family home, was lost in a fire. They lost grandfather protection for the 3-family non-conforming status because their building permit application was for a single-family dwelling and it has been three years since the fire.

Members reviewed the Petition for compliance with the Zoning Bylaw and found that a Special Permit is required because the lot contains less than 1 ½ acres.

Although it appears the proposed accessory apartment is 620 sq. ft., the Board found that the architectural plan submitted with the Application was not legible and was unable to definitively confirm the proposed total square feet of gross floor area for the accessory apartment.

The photographs submitted with the application shows one existing driveway for the primary dwelling.

The plan does not clearly define 2 off-street parking spaces for each dwelling unit.

The Conservation Commission advised that there are no wetland resources or Conservation Commission jurisdictional areas associated with the Application.

The Board of Health advised that the septic system is designed for 5 bedrooms. The Board of Health approved the proposed accessory apartment, provided that the total number of bedrooms does not exceed 5.

Kathleen Willis moved to GRANT a Special Permit and Site Plan Approval for an Accessory Apartment at 566 Gleasondale Road to include the following conditions:

- The plan shall be modified to clearly define 2 off-street parking spaces for each dwelling unit.
- The plan shall be modified to clearly show that the proposed Accessory Apartment is no greater than 700 sq. ft. of gross floor area.

The motion was seconded by Laura Spear and carried by a unanimous vote of five members present (Ernie Dodd, Laura Spear, Kathleen Willis, Len Golder and Steve Quinn).

RIVER HILL ESTATES SUBDIVISION

Ernie Dodd noted that the Riverhill Estates Subdivision is due tomorrow unless the Applicant is willing to grant an extension. Bob Collings, the Applicant, advised that he is not willing to grant an extension.

Ernie Dodd provided a copy of the Draft Decision to Bob Collings so that he may follow the Board's discussion and asked that he withhold comment until the Board has completed its review.

Board Members proceed to review the draft Decision. Bob Collings stated that the condition requiring public access and that the Open Space be conveyed to the Town, is unacceptable and will result in a complaint to the District Attorney. Ernie Dodd responded that the Board has the right to require something in exchange for waivers. The alternative could be for the Board to deny requests for waivers and limit the length of the cul-de-sac to 500'. Bob Collings said that this issue is part of a major contention and he wishes the Board would consider withdrawing the condition.

Kathleen Willis requested that the Applicant withhold comment until after the Board completes its review, as requested by the Chairman.

Once the Board completed its review, Bob Collings stated that the condition on page 10, which requires public access and that the Open Space shall be offered to the Town, is legally not sound and he will pursue the issue in court if it remains. He noted that the Board has set precedent with regard to this issue in other subdivisions.

Ernie Dodd said he disagrees. He said he discussed this issue with Town Counsel, and he noted that Chapter 41, Section 81Q, cited by Bob Collings, which states in part:

"No rule or regulation shall require, and no planning board shall impose, as a condition for the approval of a plan of a subdivision, that any of the land within said subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to the county, city or town in which the subdivision is located, for use as a public way, public park or playground, or for any other public purpose, without just compensation to the owner thereof."

This would hold true for a subdivision with no waivers. Since multiple waivers are involved in this subdivision, the Board can ask for something in exchange for granting a waiver.

Ernie Dodd also said that the Board does not set precedent. Each proposal is reviewed on its own merits.

Kathleen Willis moved to approve the River Hill Estates Subdivision with conditions as drafted and amended. The motion was seconded by Len Golder and carried by a vote of three in favor (Ernie Dodd, Kathleen Willis and Len Golder) and two abstentions (Laura Spear and Steve Quinn).

The meeting adjourned at 1:45 a.m.

Respectfully submitted,

Karen Kelleher
Planning Coordinator