

TOWN OF STOW PLANNING BOARD

Minutes of the September 11, 2007, Planning Board Meeting.

Present: Planning Board Members: Ernest E. Dodd, Laura Spear, Kathleen Willis, Len Golder and Steve Quinn
Town Counsel: Jon Whitten

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

MINUTES

September 5, 2007 – ***Kathleen Willis moved to approve minutes of the September 5, 2007 meeting, as amended. The motion was seconded by Laura Spear and carried by a unanimous vote of four members present (Ernie Dodd, Laura Spear, Kathleen Willis and Steve Quinn).***

CORRESPONDENCE

South Middlesex Opportunity Council (SMOC)

Members reviewed a letter, dated August 23, 2007, from South Middlesex Opportunity Council Housing Consumer Education Center, advising of ongoing programs. A copy will be provided to the Stow Housing Authority, Stow Housing Trust and Stow Housing Partnership.

Zoning Practice – Is Zoning a Barrier to Multifamily Housing

Members reviewed an article from the Zoning Practice “Is Zoning a Barrier to Multifamily Housing?” Not everyone agreed with the article, which blames zoning for the fact that developers are not building multi-unit housing.

Crow Island

Members discussed Rob Albright’s plans to put a 50’ x 80’ metal fabric covered structure on Crow Island and agreed that a Special Permit Modification is required.

Collings

There was an article in the *Stow Independent* on Acorn Tree Company, reporting that they are moving a tree on the Collings property so the hanger can be expanded.

PUBLIC INPUT – None

PLANNING BOARD MEMBERS’ UPDATES

Community Preservation Committee

Laura Spear reported on the Community Preservation Committee (CPC):

New members of the CPC are:

- Mike Beush, Recreation Commission
- Kate Hogan, Council on Aging

The CPC approved a Policy Statement that it will not promote one CPA use over another. For example, the CPC will not advocate affordable housing at the expense of losing protected open space.

Deed Restriction Program – A complete package for the Affordable Housing Deed Restriction Program, addressing DHCD's earlier concerns, was sent to DHCD. Letters of support are being sent from various town organizations, State Legislators and other Towns.

Ongoing litigation

Town Counsel Jon Witten updated the Board on ongoing litigation matters:

Meadowbrook Estates - Case Management for Meadowbrook Estates was put off to October.

Cingular – The Cingular (Gleasondale Mill) is in federal court. There may be a question on the Bylaw section that requires Town Meeting Approval to vary the height limitation.

Riverview Estates (Collings) – The Plaintiff requested documents on subdivisions from the past ten years. They also filed a request for derogatories and are looking into deposing Planning Board Members.

MEADOWBROOK ESTATES

Town Counsel Jon Witten met with the Board to discuss the Meadowbrook Estates mediation agreement, which was based on the Planning Board's letter of May 31, 2007 to Eldamar Development.

- A. The natural terrain elevations shall be maintained with no excavation of soil or filling along the entire portion of the access within the Town of Stow, except as necessary to construct a foundation for the access and a surface for travel.
Agreed as written.
- B. The emergency access road shall be curved to obscure the view directly between Stow and Boxborough. This will maintain a line of trees on the horizon when viewed from either town.
Strike – Members noted that the trees will fill in and this is a safety matter. It is best to have a straight road for emergency access.
- C. The surface of the emergency access road should be paved with pervious pavers to provide a good surface for the transport of heavy fire and emergency equipment and to facilitate snow plowing. This will permit natural grasses to grow in perforations and between the pavers to give the appearance of a grassed walkway.
Eldamar will construct the first 75 feet from the edge of the pavement toward the Town of Boxborough line with pervious pavers, with the remainder to be constructed with gravel.
- D. A gate locked with an emergency access lock shall be provided. During the Public Hearing, some of the abutters asked for a gate at each end of the emergency access way and others requested one gate at the town line. The location of the gate shall be identified by the applicant for approval by the Board, such approval to not be unreasonably withheld.
The Town of Boxborough wants a locked gate at the town line. The Plan will show a gate at the town line.
- E. Plantings shall be placed along ROW to block view of the access from property owners.
Strike – Property owners can plant on their property.

- F. Either the Town of Boxborough or a Homeowners Association must assume maintenance responsibilities, including repairs, snow plowing, etc.
Agreed as written. The Town of Boxborough wants an easement. Members expressed concern about page 1 of the memorandum.

- G. A snow plowing procedure shall be established to determine the best place to store snow from this access. The Storm Water Management System for Trefry Lane was not sized to handle this additional water and sedimentation load.
Snow will be plowed from Stow to Boxboro and will be stored down gradient to the Town line.

Eldamar will file plans for the September 25, 2007 Public Hearing. The Plan should include a note that it is a modification to the Plan. The agreement should be complete by September 25, 2007.

Kathleen Willis moved to accept the terms of the Mediation Agreement. The motion was seconded by Laura Spear. It was noted that the Planning Board will vote to accept the plan modification after the Public Hearing is held on September 25, 2007. The motion carried by a unanimous vote of four members present (Ernie Dodd, Laura Spear, Kathleen Willis and Steve Quinn).

Ken Kaulbach agreed to have Stamski and McNary send the plan modification to Jon Witten. Jon Witten will draft a decision for the September 25, 2007 Public Hearing.

Town Counsel Jon Witten advised that the Town won the injunction motion. Going to trial would have been very expensive, and mediation costs are shared.

ZONING BYLAW AMENDMENTS

Section 3.1.1.7

Members discussed a proposed amendment to Section 3.1.1.7 of the Zoning Bylaw. The intent of this bylaw amendment is to specifically call out that permanent residential use in the R-C district is prohibited, regardless of whether an entity is private or non-profit.

The bylaw could mention a "domicile" -- a person only has one official domicile of residence (the owner has the intention to return). Specifying "principal domicile" in the Bylaw is a possible way of further restricting residence.

Len Golder arrived at this point in the meeting.

Members asked who is responsible for enforcement of the bylaw, because the "Zoning Enforcement Officer" and "Building Inspector" are both listed. Both references are legal per Town Counsel Jon Witten

It was noted that the Bylaw does prohibit residential use in the R-C district already.

Board members asked how do we prevent staff for a non-profit from residing in the R-C district? Jon Witten responded that the Board can run proposed changes by Bob Richie (advisory from the Attorney General's Office). However, with the most recent application, the applicant would still have 8 years before any change goes into effect from any court decision.

The Board still has the right to enforce the Bylaw, which does not allow residential use today. The proposed new language may hurt the Town because it indicates existing land. The land on the plan is "frozen."

If a house is built under the current Section 3.1, it becomes an enforcement issue.

Active Adult Neighborhood Bylaw

Members noted that the Active Adult Neighborhood Bylaw has a cap on the number of units and asked Town Counsel Jon Witten about the cap:

- If the number of units is increased, and if approved, can the Board ask for a Senior Center? Jon Witten responded that if the nexus is there, the Board would need to determine that the cost is proportional.
- Members asked if the Bylaw can require a senior center as a contribution? Jon Witten responded that the Board could perhaps have an offline conversation with the applicant to see if there was any interest.
- For the Middle-income affordability requirements, the Board may want to consider a contribution to a Senior Center in lieu of fee.
 - Land for a senior center can be donated to the Board of Selectmen with a restriction.
 - Land is safer than cash.

Non-Conforming Lots

Members asked Town Counsel Jon Witten if adding a second story to a non-conforming structure on a non-conforming lot triggers Zoning Board of Appeals approval.

The Planning Board or Building Commissioner would have to determine that a 2nd story is not further detrimental:

- If it is not, the applicant can get a building permit.
- If it appears that it would be more detrimental, the applicant would need to have the Zoning Board of Appeals mitigate.
- The Appeals Court determined that building up, such as adding a 2nd floor, would make a building more nonconforming. However, the ZBA could make a finding that the addition is not detrimental.

Members asked whether the Bylaw can add a statement that requirements are not subject to a variance? Jon Witten responded that the Board can't strip the authority of the ZBA. (The ZBA cannot be stripped of 1 of its 3 primary functions.) The Planning Board should meet with the ZBA to discuss this issue, knowing that the ZBA must meet all three criteria to grant a variance. The ZBA cannot prohibit area variances, but it can prohibit use variances.

Section 3.11.14

The Board could change this section of the Bylaw to make Cell Towner renewals be 3 years; however, Jon Witten recommends waiting until the Cingular decision has been made.

Open Space and Public Access

The Board needs to emphasize that the applicant is making a donation of open space to the Town. The Board should negotiate each plan for an easement individually. The Board can make it clear up front that it prefers public access, such as saying, "The Board seeks Applicants who provide public access" for open space land.

"Nexus"

The Board asked for clarification about "nexus" and what that means in terms of what it can ask of an applicant. Nexus is looking at the public harm that can be offset by public benefit.

Registering deeds for transfer of Land

Using an ANR as an example, when the Board endorses a Plan, the Board can require metes and bounds for the affected land outside the affected parcel and not part of the plan. The land can be adjacent, or there can be a note added to the Plan. The grantor gets a note recorded on the deed. Such activity is always recorded on the grantor/grantee deeds.

Accessory Apartments

Any Bylaw changes will go to Jon Witten for review if presented at Town Meeting. The Board is interested in making all accessory apartments be allowed by right via the building inspector. Jon Witten said that would be okay as long as the Bylaw and the building inspector's responsibilities are clear.

December 3, 2007 Special Town Meeting

The Board can always present zoning at any Town Meeting. The Board can advertise propose changes 6 months in advance. If a change affects a Special Permit, the first advertisement date goes in effect. This gives the Board more power.

Proposed February Town Meeting

The Board reviewed a letter to the Board of Selectmen and agreed to recommend not having another Special Town Meeting in February following the December Town Meeting.

Zoning Changes and Town Meeting Approval

The Attorney General approved the ability to make minor clerical changes (renumbering, bullets, etc.) without Town Meeting approval. For example, North Reading implemented language that was inserted into every bylaw amendment. Karen has this language.

Proposed Bylaw Changes

The Board reviewed sections of the Bylaw with proposed changes for a December Town Meeting.

- The Board decided not to present changes to Sections 3.1.1.7 and 3.1.1.8.
- The Board will proceed with changes to Sections 3.1.1, 3.1.1.4, 3.1.1.5 and 3.1.2.6.
- The Board will proceed with changes to the Accessory Apartment sections of the Bylaw:
 - 3.10 Table of Uses
 - 8.12 will have changes
 - 8.1.1.3, 8.1.3.1, 8.1.3.2 and 8.3.1 – Remove
- The Board will change 3.8.1.3: Snowmaking equipment shall be allowed provided it complies with Section 3.8.1.3 in regards to noise requirements.

The Board will hold a Public Hearing on changes to the following sections:

- 8.4.1
- 8.4.1.6
- 9.3.3.3 (1)
- 4.3.2.7 to add a new Section that STRUCTURES and BUILDINGS of 120 sq. ft. or less shall have a minimum required side or rear YARD setback of 5 feet. The existing Section will also change by adding "greater than 120 square feet."

The Board should check changes in the Building Code to see if numbers are increasing.

Letter from Attorney General about the Annual Town Meeting

Page 3 of the letter stated that the Town could not have amendments that differ from State Building Code. The Building Board can require differences if deciding upon a Special Permit.

Page 4 of the letter references an 18' minimum fire lane width. This comment raised discussion among Board members:

- Does the Board need to make roads at least 18'?
- Are fire lanes separate from roads?
- What about emergency access? Emergency access is not a fire lane.

Page 6 of the letter references Article 64 and cautions about agriculture uses. The Board agreed that it did not have to do anything in response to the comment. The concern had been addressed already.

MEETING SCHEDULE

The Board decided to cancel the next week's (September 18, 2007) meeting.

TOWN MEETING – ZONING ARTICLES

Members further reviewed and edited a draft letter to the Board of Selectmen concerning the Zoning Articles at the Special Town Meeting and Annual Town Meeting.

The meeting adjourned at 11:15 p.m.

Respectfully submitted,

Laura Spear
Vice Chairman