

# **TOWN OF STOW PLANNING BOARD**

Minutes of the April 14, 2009, Planning Board Meeting.

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

Associate Member: Lori Clark (Non-Voting Associate)  
Malcolm FitzPatrick (Non-Voting Associate)

Planning Coordinator: Karen Kelleher

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

**PUBLIC INPUT** - None

## **PLANNING BOARD MEMBERS' UPDATES**

Community Preservation Committee (CPC) – Laura Spear reported on CPC activities: *Historic Musket* - CPC received a copy of an appraisal on the Historic Musket in the amount of \$15,000.00.

*Historic House Inventory* – CPC approved \$1,000.00 in administrative funds for the Historical Commission to obtain an estimate for a Historic House Inventory. It was the CPC's impression that they would have a pretty good estimate in time for Town Meeting. Laura said there was some discussion about doing a portion of the inventory this year. Laura is not sure how the Historical Commission wants to proceed at this point.

In response to a question as to why an inventory is needed, Laura explained that the Historical Commission's only charge is to identify historic properties and to maintain a list. The information in the existing inventory does not comply with state mandate.

## **Stormwater Management**

Based on the Board's discussion at the last public hearing for the Subdivision Rules and Regulations, Laura Spear provided an overview statement from the MA Stormwater Management Handbook, which confirms that the Stormwater Management Handbook does address both quality and quantity.

## **COORDINATOR'S REPORT**

Karen Kelleher updated the Board on ongoing activities in the Planning Department:

### **Derby Woods**

Connie Schwartzkopf left a message concerning complaints about runoff onto her property from Harvard Acres and Derby Woods. She stated that she has seen more drainage since the trees were taken down on the Derby Woods property and suggested that the Town require the developer to plant lots of conifers (White Pine) around the drainage basins instead of the maple trees, as shown on the plan.

Stow Recreational Facility – Two letters were received from abutters concerning the Stow Recreational Facility, stating concern about the landscape plan. They would like to see evergreens, rather than elm trees as proposed.

Orchard View (Brandymeade Circle) – Need to schedule a site walk at Brandymeade Circle to define the access way to the drainage basin through the utility easement. Members agreed to meet with the property owner on April 21, 2009 at 6:00 p.m. Karen Kelleher will contact the property owner.

Whitney Homestead – Someone stopped by the Office to inquire about the Whitney Homestead property. He said he understands the property is under agreement, but if the sale does not go through, he would be interested in the property to convert into a couple of apartments. Karen explained the Zoning Bylaw requirement for historic homes.

Town Meeting Presentations – Karen reminded members of the April 30<sup>th</sup> deadline to submit PowerPoint presentations for Town Meeting Warrant Articles.

### **REQUEST FOR LOT RELEASE – PARCEL X, JUNIPER HILL SUBDIVISION**

Members discussed the request to release a portion of Parcel X (well site) of the Juniper Hill Subdivision. A portion of Parcel X, shown as Parcel A on an ANR Plan, was conveyed to Gilbert Bony in 1984 to be combined with an existing house lot off of Pine Ridge Road. There now appears to be a title question on the Pine Ridge Road Lot, as Parcel A (a portion of parcel X) was never released from the Covenant. Members questioned how the release should be prepared. Should the release be for Parcel X, or should the release form state “A portion of Parcel X, as shown as Parcel A on Plan entitled “Land in Stow, MA”, recorded at the Middlesex Registry of Deeds as Plan No. 735 of 1984? Karen Kelleher will contact the property owner to check with his attorney as to how the Lot Release should be prepared.

### **PROPOSED ZONING BYLAW AMENDMENT - LOT AREA and Slope**

Laura Spear presented a proposed Zoning Bylaw amendment to Section 4.3.2.1 (Area, Frontage, YARD, and FLOOR AREA Requirements) by inserting the words “**At least twenty-five (25%) of the lot area shall not have a slope of fifteen percent (15%) or more.**” To read as follows:

4.3.2.1 LOT area – LOT area shall be determined by calculating the area within a LOT including any area within the LOT over which easements have been granted, provided that no area within a STREET shall be included in determining minimum LOT area. **At least twenty-five (25%) of the lot area shall not have a slope of fifteen percent (15%) or more.** Water area beyond ten (10) feet from the shorelines shall not be included in determining the minimum LOT area. Furthermore, in all districts, at least 50% of the minimum required LOT area shall be in land which is not in a wetlands or Flood Plain/Wetlands District.

The draft amendment is in response to the Board’s discussions about slopes. The proposed text is consistent with Greenfield, Andover and Peabody Bylaws. Laura also searched the Zoning Bylaw to identify areas where “Lot area” is referenced to be sure there are no unintended consequences.

Laura asked that the Board consider this issue at a future meeting.

### **ANR PLAN, BOXBORO ROAD (MAP SHEET R17, PARCEL 8)**

Members reviewed an ANR Plan for property off of Boxboro Road, owned by Christopher W. Jenkins and Julian C. Nord. The Plan creates Parcels A and B to be conveyed to abutting properties. Malcolm FitzPatrick recommended asking the property for an easement to land owned by the Town of Stow (Hale School). Members agreed that an easement would not be

appropriate, as it would require a wetlands crossing. Members agreed that a sidewalk easement along Boxboro Road would be desirable.

**Ernie Dodd moved to:**

- **Approve the ANR Plan entitled “Plan of Land in Stow, MA, prepared by InLand Survey, Inc. DBA Zanca Land Surveying, dated February 27, 2009;**
- **Authorize Karen Kelleher or Steve Quinn to endorse the Plan; and**
- **Ask the property owner if they are willing to grant a sidewalk easement to the Town.**

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

### **PROPOSED ZONING BYLAW AMENDMENT – STABLES AND BARNs**

Laura Spear presented a proposed Zoning Bylaw amendment to Section 3.2 (Residential District Uses). This proposal is a result of the Board’s discussion about Section 3.2.2.5, which allows Veterinary hospitals, stables and kennels, raising or breeding animals for sale, and boarding animals, provided that no such BUILDINGS are located within one hundred (100) feet of a LOT line.

As previously discussed, this bylaw is inconsistent with MGL 40A, Section 3, which states:

**“MGL 40A, Section 3: Subjects which zoning may not regulate; exemptions; public hearings; temporary manufactured home residences**

Section 3. No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the **primary purpose of commercial agriculture**, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, **except that all such activities may be limited to parcels of 5 acres or more in area not zoned for agriculture**, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term **“agriculture” shall be as defined in section 1A of chapter 128**, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.”

Laura proposed to amend the Bylaw as follows:

Add a new Section 3.2.1.12 to reference MGL, Chapter 40A, Section 3:

3.2.1.12 For parcels of five (5) acres or greater, the provisions of Massachusetts General Law, Chapter 40A, Section 3 shall apply.

Remove the words “raising or breeding animals for sale, and boarding animals,” from Section 3.2.2 of the Bylaw to read as follows (as MGL Chapter 40A, Section 3, prohibits a bylaw from requiring a special permit for such uses)

3.2.2.5 Veterinary hospitals and kennels, provided that no such BUILDINGS are located within one hundred (100) feet of a LOT line;

Add a new Section 3.2.2.8, consistent with MGL Chapter 40A, Section 3, as follows:

3.2.2.8 For parcels of less than five (5) acres, stables, raising or breeding animals for sale, and boarding animals, provided that no such BUILDINGS are located within one hundred (100) feet of a LOT line. The Special Permit Granting Authority may allow stables within the one hundred foot (100') setback, provided that the BUILDING was in existence on or before November 13, 1968, was historically used for such purpose, and the use meets the requirements of the Board of Health; and provided that the Special Permit Granting Authority finds that such use, with any necessary mitigation measures, are in harmony with the character of the neighborhood.

This proposed addition is in response to the Board's discussions about the possibility of allowing a stable in existing structures, within the one hundred foot (100') setback, provided that the Special Permit Granting Authority finds that the uses are in harmony with the character of the neighborhood. Laura suggested that the Board get a count of how many stables or barns were in existence before November 13, 1968, so that the proposed amendment would not be considered spot zoning. Malcolm FitzPatrick said that the Bylaw should include specific conditions to restrict agricultural “uses” as well as structures within the 100' setback.

Laura asked that the Board consider this issue at a future meeting.

## **PAPER STREETS**

Laura Spear did some research on paper streets and presented information from a seminar held by Tony Vigliotti, the Register of Deeds in Worcester.

Members noted examples of paper streets in Stow are Joanne Drive off of Sudbury Road and Road A off of Taylor Road.

Malcolm FitzPatrick noted that the purpose of a road is to provide frontage for access to lots.

Karen Kelleher noted that, once a plan is recorded, the actual road layout is grandfathered. However, if the property is not developed within 8 years, plans for development must meet current bylaws and regulations. She noted that the developer for the Joanne Drive subdivision tried, on several occasions, to submit an ANR Plan showing lots meeting today's dimensional requirements, and was told that he would have to file a new subdivision plan that complies with current Subdivision Rules and Regulations for road construction and drainage. He would also have to comply with current Board of Health and Conservation Commission requirements. Because of the increase in frontage and lot size and the Rivers Protection Act, a number of lots would be eliminated.

Karen Kelleher also noted that the Board could rescind a subdivision if construction has not commenced within two years, as noted in most of the Board's decisions.

Members questioned whether this is a "real issue" that needs to be addressed.

Laura recommended that it may be time to have Town Counsel come in to talk to the Board and this may be one of the issues. Karen Kelleher recommended coming up with a list of topics to give to Town Counsel.

### **COMMUNITY PLANNING ACT 2 (CPA-2 AND LAND USE PLANNING ACT (LUPA)**

Members discussed the proposed CPA-2 and LUPA, which are proposed legislature to amend MGL Chapter 40A (The Zoning Act).

The premise of both proposals is to have Master Plans that are officially blessed. CPA-2 is a carrot-based approach to incent and reward communities to participate. The benefits of CPA-2 apply to all communities. LUPA is a stick approach for development, based on the concept that there are not enough jobs because there is not enough housing. It requires a housing production plan showing an increase in "as of right" (No Special Permit) housing by 5% per year, not including age restricted, bedroom restricted or 40B developments. Many of the benefits of LUPA only apply to communities who adopt a Master Plan that is certified by the Regional Planning Agency.

Both Karen Kelleher and Laura Spear see the LUPA as a housing production plan. Karen Kelleher noted that not all communities are the same and that it would be impossible for small communities, such as Stow, with no infrastructure, to get a Plan certified. Each year, for 10 years, municipalities are required to have a Housing Production Goal equal to 1/10 of its Target Number and to ensure new permits for these are available if they are applied for. For example: If the Production Target Number (5%) is 1,000 units, then 100 new permits would be required to be available in the Residential Development District each year for 10 years. Len Golder noted the premise is that housing will create jobs.

CPA-2 was drafted by a committee of planners, environmentalists, land use consultants and lawyers, including Bob Ritchie, (until recently the Director of the Municipal Law Unit of the Attorney General's Office) developed the new provisions over a period of ten years. The Legislature has failed to pass this Bill, in large part due to objections from the housing and development community.

The primary purpose of CPA-2 is to get towns to adopt Master Plans and require consistency between Master Plans and Zoning Bylaws and give precedence to Home Rule. CPA-2 also clarifies existing land use legislation such as 40A s.6, and creates enabling legislation for Impact Fees, Mitigation, Site Plan Review, Cluster Development, Inclusionary Zoning, elimination of ANRs, reduction in "grandfathering" to 3 years, and other innovative land use techniques; and provides methods for resolving land use disputes without litigation. All of the proposed zoning benefits are provided to all communities without imposing extra conditions or requirements.

LUPA was drafted by Greg Bialecki, who was appointed by Governor Patrick to amend the Zoning Act, following about a year of meetings with planners, lawyers, environmentalists and representatives of the housing, real estate and development industry. Boston is exempt from LUPA provisions.

The primary purpose of LUPA is to require local Zoning consistent with the Commonwealth's land use objectives; to increase State and Regional authority of local processes; promote prompt and predictable "as of right" development by eliminating Special Permits; and establishing housing production targets.

LUPA incorporates some elements of CPA-2, although some of these elements require a community to "opt-in" to enjoy their benefits. Communities that do "opt-in" must adopt state land use goals in their Master Plans and zoning regulations and receive approval from their Regional Planning Agency (RPA) in order to be "Certified". Communities that don't "opt-in" will not obtain priority for State infrastructure spending and grant programs or be able to implement all of the innovative zoning techniques; would not have the grandfather protection time reduced from 8 to 3 years and would not be allowed to have Rate of Growth Development bylaws or two acres or more single family residence zoning. Existing Site Plan Review Bylaws would become nullified and be replaced with LUPA Site Plan Review provisions one year after LUPA is implemented. Site Plan approval is "as of right" only; decision required within 90 days; no Special Permits allowed; no mitigation allowed except in extraordinary circumstances; impact fees allowed only in accordance with and proportional to a Capital Improvement Plan.

LUPA requires that local planning and zoning must obtain approval by newly empowered Regional Planning Agencies and a newly created Interagency Planning Board comprised of the following non-elected officials:

- The Secretary of Energy and Environmental Affairs
- The State Permit Ombudsman
- The Secretary of Housing and Economic Development
- Representatives from the Association of Regional Planning Agencies
- (Non-voting) – designated "the regional representative")
- Representatives from the Association of Planning Directors
- (Non-voting – designated "the municipal representative")

Members are concerned about both proposals, especially LUPA as it diminishes home rule and creates two sets of legislature (Opt-in Communities and Opt-out Communities). Vesting is made easier for a developer, as it requires only a simple "Declaration of Development" letter to begin the 8-year zoning freeze. Steve Quinn said that you can't have blanket zoning across the state, as communities are not all the same. Laura Spear and Karen Kelleher attended a MAGIC meeting for Planners, and none of the Planners were supportive. Laura and Karen spoke with Representative Hogan after the meeting and voiced their concern. Laura suggested to MAGIC representatives that they prepare a table to compare communities across the state to see what kinds of infrastructure each community has. Members are also concerned that there is no effort to look at Chapter 40B.

Lori Clark questioned the mandate increasing the housing stock, whether or not the market is there. Steve Quinn said a developer will build if the market is there, not because the rules are easier.

Malcolm FitzPatrick said if communities are not allowed to do planning at the local level, it won't work.

Members agreed that this subject should be further discussed at a future meeting. Karen Kelleher noted that it is also important to have the Board of Selectmen and the Stow Housing Committees review the proposals and send comments to our State Representative and Senator.

## **DESIGN GUIDELINES**

It was agreed that Design Guidelines will be discussed at a future meeting. Karen will distribute a copy of the Post Office Square Design Guidelines from the Town of Sharon. This document puts parameters around design guidelines and talks about setbacks, styles, signs, materials, and provides examples.

Ernie Dodd noted that today's Boston Globe had an article on signs. Malcolm FitzPatrick said the Salt Box shopping center in Bolton is a good example.

## **LINEAR RETAIL**

It was agreed to schedule Linear Retail on the April 28, 2009 meeting.

Malcolm FitzPatrick noted a huge generator to the north of the shed at the shopping center and questioned why it is located there. Steve Quinn said he thinks the generator is for the septic system, not the store. It doesn't appear to be big enough for the store, and if it was, it would be located closer to the store.

Lori Clark noted that Daisy Dearborn complained about trash from the Shopping Center.

## **ASSESSMENT OF PRIORITIES**

Members reviewed priorities defined by the Planning Board at the beginning of the fiscal year:

1. Affordable Housing
  - Accessory Apartments "by right" – Proposed amendment failed at Town Meeting.
  - Change mix for AAN fees in lieu of Affordable Housing – Proposed for May 2009 Annual Town meeting
2. Village Zoning
  - Lower Village and Gleasondale Mixed Use Village Zoning – Deferred to the Master Plan Committee to address in the Master Plan Update.
  - Signs – The Lower Village Committee has been reviewing the Sign Bylaw. Laura recommends reviewing what the Lower Village Committee will propose. The Lower Village Sub-Committee will defer a couple of issues that they were unable to come to a consensus on (neon "open" signs in the window and ladder signs). Malcolm FitzPatrick said the Town does not have the right to restrict signs inside the window. It was noted the existing bylaw now restricts those signs.
  - Architectural Standards – Review Sharon's Post Office Square Design Guidelines at April 21, 2009 meeting.
3. Update Subdivision Rules and Regulations – Almost complete.

## **ADJOURNMENT**

The meeting adjourned at 9:55 p.m.

Respectfully submitted,

Karen Kelleher  
Planning Coordinator