

TOWN OF STOW PLANNING BOARD

Minutes of the August 17, 2010 Planning Board Meeting.

Present: Planning Board Members: Kathleen Willis, Steve Quinn, Ernest Dodd and Lori Clark
Associate Member: Brian Martinson

Planning Coordinator: Karen Kelleher
Administrative Assistant: Kristen Domurad

Absent: Planning Board Member: Lenny Golder

The Meeting was called to order at 7 P.M.

REVIEW OF CORRESPONDENCE AND MINUTES

Correspondence

Letter from Karen Kelleher to Daisy Dearborn RE: Garden Club Donation

Karen Kelleher said this letter was confirming that the Garden Club would write a new check for their donation for Lower Village beautification, as the original check was lost and never cashed.

Town of Harvard Notification of Scenic Road Consent

Kathleen Willis asked Karen Kelleher to obtain a copy of Harvard's Scenic Roads bylaw.

MINUTES

Kathleen Willis moved to approve the minutes of the August 10th, 2010 Planning Board meeting as amended. The motion was seconded by Ernie Dodd and carried a vote of four in favor (Kathleen Willis, Ernie Dodd, Steve Quinn and Lori Clark).

PUBLIC INPUT

No public input at this time.

Planning Board Members' Updates

Board of Health Liaison Update

Kathleen Willis reported on the Board of Health meeting of Monday August 16, 2010.

The Health Department has already received twelve requests for private wells from the Harvard Acres neighborhood. Jack Wallace expressed concern for the potential increase in workload in the department.

Kathleen Willis suggested they work with an engineer and recommended they contact Sue Carter Sullivan.

The Board of Health also discussed the draw down of Lake Boon with the Lake Boon Commission. They both recommended proceeding with the draw down in order to clear evasive plants from the lake. The Board of Health will write a letter to the Board of Selectmen with their support to drawdown Lake Boon. If any wells go dry, they will reevaluate the plan.

The Board of Health discussed the Comprehensive Permit applications for Plantation Apartments I and II. Members of the Stow Elderly Housing Group; Ellen Cataldo, and Bruce Fletcher also engineer and Scott Hayes spoke about their options for obtaining water for their project. They are looking into several options: dropping a well in the Town Forest, possibly hooking up to Meetinghouse, and working with Town Administrator, Bill Wrigley on water options with the Town of Maynard.

Kathleen Willis asked why the Board of Health regulations are 150% over the State Title V requirements. Board of Health Chairperson, Marcia Rising, said this bylaw was implemented because people put in garbage grinders even though it is against the bylaws and the extra 50% is in place as a precautionary measure.

Elementary School Building Committee (ESBC)

Steve Quinn reported the committee is meeting monthly now that the construction has commenced.

COORDINATOR'S REPORT

Lower Village Existing Conditions RFP

Karen Kelleher reported she had been working to identify funding sources for the professional consulting services for Lower Village Existing Conditions Plan. Mike Clayton, Highway Superintendent, spoke with his contact from the State who informed him that consulting services for this project was not something they would be willing to fund, as they have funded similar projects where towns have not followed through with the plans.

Karen Kelleher said she spoke with Coler and Colantonio who informed her that they have worked on similar projects where Chapter 90 funds were awarded. Kenny Cuputo of Coler and Colantonio said if they were awarded the bid he would assist Mike Clayton in obtaining Chapter 90 funds for the project.

Steve Quinn asked if the Board could add a section to the RFP asking for assistance in acquiring funding. Karen said this could be possible, as Coler and Colantonio offered this assistance if they were awarded the contract.

Karen noted she expects the cost to be approximately \$20,000 and the Highway Department could contribute up to \$5,000 from their highway funds.

Karen spoke with Town Administrator, Bill Wrigley about the Board of Selectmen contributing to fund the RFP. Bill Wrigley said he would include this in the Board of Selectmen's agenda for discussion.

Karen noted the Board could always go to Town Meeting to get funding.

Coler and Colantonio suggested the Planning Board move forward with the RFP, adding a statement that the project is subject to acquiring funding.

The Planning Board agreed to move forward with the RFP.

Master Plan Committee

Karen Kelleher reported that she received a letter from Michelle Ciccolo from The Ciccolo Group requesting additional payment for \$2,340, over and above the contract amendment through January 15, 2010. According to the contract invoicing was to shift to an hourly rate.

However the Planning Board's funding approval did not include the hourly rate. Based on an hourly rate the cost would be \$12,000.00 for 170 hours worked, however The Ciccolo group is asking for \$2,300.00 to cover her staff's hours and insurance and office expenses. The Master Plan committee has not yet discussed the request for additional payment. However Karen and Kathleen explained that The Ciccolo Group put in a significant amount of extra hours.

Steve Quinn suggested the Master Plan Committee review the request and make a recommendation to the Planning Board.

Lighting Committee's Comments to Lighting/Signage FAQ

The Board will review the comments from the Light Pollution Study Sub-Committee and finalize the FAQ at their next meeting of September 7, 2010.

APPOINTMENTS

Executive Session with Martha Monroe and Michael Travalent

Martha Monroe and Michael Travalent did not attend the meeting.

Karen Kelleher offered to contact Martha Monroe in regards to the ongoing litigation concerning the Meadowbrook Estates Subdivision.

DISCUSSION/ACTION ITEMS

Review Comprehensive Permit Applications

Plantation Apartments II

Steve Quinn reported that he, Karen Kelleher, Ernie Dodd and members of the Stow Elderly Housing Corporation, Bruce Fletcher and Ellen Cataldy, met to discuss their concerns, as they would not be available for the Planning Board meeting.

Karen Kelleher said Sue Sullivan's comments would be submitted shortly. Currently her main concerns are ADA compliance because of the grading and the drainage calculations being inconsistent with storm water quality standards.

The Planning Board reviewed the application and made the following recommendations to the Zoning Board of Appeals:

A. ZONING BYLAW

- 1) *The Planning Board supports the requested exception from the requirements of section 3.2 to allow the proposed multi-family building and accessory uses, including community space, meeting rooms, office space and parking and access for residents, employees and visitors on Parcel A.*
- 2) *The Planning Board supports the requested exception from the requirements of section 3.2.1, to allow the proposed multi-family building and accessory uses on Parcel A, which are otherwise not permitted.*
- 3) *The Planning Board supports the requested exception from the requirement that an Erosion Control Special Permit from the Planning Board be obtained, provided that the Comprehensive Permit incorporates the erosion control measures as required by section 3.8.1.10 of the Zoning Bylaw. In addition, the Planning Board strongly recommends that the Zoning Board of Appeals Consulting Engineer review the Erosion Control Plans.*

- 4) *The Planning Board supports the requested exception from the requirement that a separate performance bond be required to ensure compliance with the erosion control requirements set forth in section 3.8.1.10, provided that the overall bond for the Comprehensive permit include erosion control. It is further recommended that the Zoning Board of Appeals Consulting Engineer review the overall bond amount and that such bond include a 50% contingency, as is standard practice for performance bonds required in Planning Board approvals.*
- 5) *The Planning Board supports the requested exception from the requirement that a copy of the Stormwater Pollution Prevention Plan and the Notice of Intent filed with the Environmental Protection Agency under the National Pollutant Discharge Elimination System be submitted to the Planning Board, provided that such copies are provided to the Zoning Board of Appeals. In addition, it is strongly recommended that the Zoning Board of Appeals Consulting Engineer review the Stormwater Pollution Prevention Plan and Notice of Intent.*
- 6) *The Planning Board supports the requested exception to waive the criteria set forth in Section 3.9.7 for the existing house and accessory barn, as depicted on the plan to be located on Lot 1, provided that:*
 - *The existing house and accessory barn are considered part of the Comprehensive Permit.*
 - *The Comprehensive Permit includes a condition to limit the use of lot 1 to one single-family dwelling and an accessory barn.*

In addition, the Planning Board understands that Stow may hold fee in the land if CPA Funds are used. If it is intended that lot 1 is to be conveyed, it is recommended that the Zoning Board of Appeals consult with Town Counsel to determine if such conveyance is appropriate.

- 7) *The Planning Board supports the requested exception to allow the proposed 37-unit multifamily dwelling and accessory uses in a Residential District, and to waive any requirement for a special permit, to be replaced by the Comprehensive Permit review and approval process.*
- 8) *The Planning Board does not feel an exception to section 4.1.2 is necessary, as the barn is considered an “accessory building”. In addition, as noted in item 6 above, the Planning Board recommends that the Comprehensive Permit include a condition to limit the use of lot 1 to a one single-family dwelling and an accessory barn.*
- 9) *The Planning Board supports the requested exception. Parcel A is in fact an addition to Plantation Apartments I (neighboring Lot U11-13-1).*

The fact that the ownership structure of Plantation Apartments I and Plantation Apartments II may differ, Stow Elderly Housing Corporation will hold some interest in both properties. In addition it is our understanding that the Town of Stow will also hold interest in Lot 1 and Parcel A due to the contribution of CPA Funds. Parcel A (Plantation Apartments II) and U11-13-1 (Plantation Apartments I) serve the same function to provide affordable elderly housing and will be controlled by Stow

Community Housing Corporation. Further, these properties could not split in the future because the uses, frontage and access are shared.

- 10) *The Planning Board supports the requested exception to waive the criteria set forth in Section 4.1.3 for the existing house and accessory barn, as depicted on the plan to be located on Lot 1, provided that:*

- The existing house and accessory barn are considered part of the Comprehensive Permit.*
- The Comprehensive Permit includes a condition to limit the use of lot 1 to one single-family dwelling and an accessory barn.*

In addition, the Planning Board understands that Stow may hold fee in the land if CPA Funds are used. If it is intended that lot 1 is to be conveyed, it is recommended that the Zoning Board of Appeals consult with Town Counsel to determine if such conveyance is appropriate.

- 11) *The Planning Board supports the requested exception to the requirements of Section 4.2.1, which limits the height of any building or structure to 35 feet without a special permit.*

The zoning bylaw provides for a pitched roof by measuring the mean height between the eaves and the ridge. It is logical to apply this same approach to a mansard style roof. Although the variance may not be necessary it should be granted to avoid confusion since the mansard style is not explicitly mentioned in the Zoning Bylaw. In addition, it is the Planning Board's understanding that the Fire Department is not opposed to the proposed building height.

- 12) *The Planning Board supports the requested exception to waive the criteria set forth in Section 4.3.2.3 for the proposed Lot 1, provided that:*

- The existing house and accessory barn are considered part of the Comprehensive Permit.*
- The Comprehensive Permit includes a condition to limit the use of lot 1 to one single-family dwelling and an accessory barn.*

In addition, the Planning Board understands that Stow may hold fee in the land if CPA Funds are used. If it is intended that lot 1 is to be conveyed, it is recommended that the Zoning Board of Appeals consult with Town Counsel to determine if such conveyance is appropriate.

- 15) *The Planning Board supports the requested exception from the requirements of Section 4.3.2.4 as it relates to Parcel A.*
- 16) *The Planning Board supports the requested exceptions from the requirements of Section 4.4, Table of Dimensional Requirements.*
- 17) *The Planning Board recommends that the Zoning Board of Appeals seek advice from the Board of Health, DEP and the Zoning Board of Appeals Consulting Engineer on this requested exception.*

- 18) *The Planning Board recommends that the Zoning Board of Appeals seek advice from its Consulting Engineer on this requested exception to ensure proper stormwater quality standards.*
- 19) *The Planning Board supports the requested exception for a copy of the covenant assurance compliance with the provisions of Section 6.2.5 be approved by the Planning Board, provided that such covenant be submitted to the Zoning Board of Appeals and be reviewed by Town Counsel.*
- 20) *The Planning Board supports the requested exception, provided that the Erosion Control and Sedimentation Plan for the entire site be submitted to the Zoning Board of Appeals and reviewed by its Consulting Engineer.*
- 21) *The Planning Board does not believe Section 6.2.7 is applicable to the proposed Comprehensive Permit Application.*
- 22) *The Planning Board does not support a blanket exception from the requirements of section 6.3, which encompasses many aspects of signs. The Planning Board does support the request that the Zoning Board of Appeals review and approve signage as part of the Comprehensive Permit, however, we strongly recommend that any signage comply with applicable standards for signage and associated lighting.*
- 23) *The Planning Board supports the requested exception from the requirements of Section 6.3.4 to allow an entrance sign to be located approximately as shown on the plan.*
- 24) *The Planning Board supports the requested exception from the requirements of Section 7.2 to allow 3 of the 43 planned parking spaces form Parcel A to be located on the neighboring Plantation Apartments I lot.*
- 25) *Section 7.3.3, Schedule of Minimum Parking: in a Residential District does not apply to this site. Section 7.3.3.4, Schedule of Minimum Parking: Institution is the appropriate section for this development. Based on the parking requirement for nursing homes and elder care facilities as outlined in Section 7.3.3.4, it appears that adequate parking is provided.*
- 26) *The Planning Board supports the requested exception from the requirements of Section 7.7.1, provided that adequate screening is provided for all abutting properties. The current plan does not provide sufficient screening.*
- 27) *The Planning Board supports an exception from the requirements of Section 7.7.2, to allow the access driveway as shown on the plan and to allow Johnston Way to be widened to twenty (20) feet, which would reduce impervious surfaces and impact on the stormwater management system.*
- 28) *The Planning Board supports the requested exception from the requirements of 7.7.4.1 to allow the parking area on Parcel A as shown on the plan, provided that additional screening is provided. The current plan does not provide sufficient screening.*
- 29) *The Planning Board supports the requested exception from the requirements of Section 7.7.5, Interior Area Landscaping Requirements.*
- 30) *The Planning Board does not support the requested exception from the requirements of*

Section 7.7.6.7, as it relates to landscaping to be installed by the applicant, along a strip of land owned by Keith and Jeanne Mahon, as most plantings are covered by a one-year guarantee. In addition, the Planning Board feels strongly that Section 7.7.6.7 should apply to all screening to abutting properties.

- 31) *The Planning Board supports the requested exception from the requirements of section 8.9.2.1, as all of the units on Parcel A will be designated as affordable units.*
- 32) *The Planning Board supports the requested exception from the requirements of Section 9.3.3.5, which requires Site Plan Approval, provided that Site Plan Approval be considered as part of the Comprehensive Permit.*
- 33) *The Planning Board does not support the request for the Zoning Board of Appeals to grant a blanket waiver. All requirements of the Zoning Bylaw should apply, unless specifically waived.*

B. SUBDIVISION CONTROL REGULATIONS

The Planning Board recommends that the Zoning Board of Appeals seek input from their Consulting Engineer with regards to how the road design standards and required improvements sections of the Subdivision Rules and Regulations may or may not apply to the proposed Comprehensive Permit Application.

- 1) *The Planning Board supports the requested waiver, provided that an application fee, sufficient to cover costs incurred by the Zoning Board of Appeals is required.*
- 2)
 - (i) *The Planning Board recommends that the Zoning Board of Appeals seek input from their consulting engineer on the request for a finding that the access driveway is of sufficient width, suitable grade, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon and served thereby.*
 - (ii) *The Planning Board recommends that any proposed lighting, including street lights be installed with full cutoff fixtures as required by the Zoning Bylaw. The Planning Board recommends that a sidewalk easement along existing Great Road frontage be provided.*
- 3) *The Planning Board supports the requested waiver, provided that both Lot 1 and Parcel A are part of the Comprehensive Permit.*
- 4) *The Planning Board supports the requested waiver from the requirements of Section 7.4.1 of the Subdivision Rules and Regulations, which requires that all lots within a proposed subdivision comply with the requirements of the Zoning Bylaw. Such waiver should be limited to only those sections of the Zoning Bylaw listed above in which the Planning Board supported requested exceptions. All requirements of the Zoning Bylaw should apply, unless specifically waived.*
- 5) *The Planning Board supports the requested exception from the requirement that a separate performance bond be required for the subdivision of land, provided that the overall bond for the Comprehensive Permit is required. It is further recommended that the*

Zoning Board of Appeals Consulting Engineer review the overall bond amount and that such bond include a 50% contingency, as is standard practice for performance bonds required in Planning Board approvals. It is also recommended that the form of the performance guarantee be consistent with the requirements of Section 5.3 of the Subdivision Rules and Regulations.

- 6) The Applicant requests that the administrative requirements of Section 10.4, Mandatory Notice Prior to Commencement of Construction Work, Section 10.5, Inspections, and 10.8, Completion within Eight Years, be waived in their entirety and superseded by the terms and conditions of the Comprehensive Permit,

The Planning Board supports the requested waiver, provided that appropriate terms and conditions are included in the Comprehensive Permit.

C. THE FOLLOWING EXCEPTIONS FROM THE BOARD OF HEALTH REGULATIONS ARE REQUESTED:

- 1) *The Planning Board defers to the Board of Health to make a recommendation on this request for waiver.*

D. THE FOLLOWING EXCEPTIONS FROM THE GENERAL BYLAWS ARE REQUESTED:

- 1) *The Planning Board recommends that the Zoning Board of Appeals seek input from their consulting engineer on design standards for the access road.*

E. OTHER RELIEF SOUGHT:

- 1) *The Planning Board supports the fact that both Parcel A and Lot 1 are included in the Comprehensive Permit.*
- 2) *The Planning Board does not support the request for the Zoning Board of Appeals to grant a blanket waiver. All requirements of the Zoning Bylaw should apply, unless specifically waived.*

ADDITIONAL PLANNING BOARD COMMENTS

The Planning Board has the following questions concerning the Plan:

Sheet 2 - Will the existing stonewall between Parcel A and U-11 Parcel 13-1 be preserved?

Sheet 4 – It is the Boards understanding that the chiller will be moved to the south of the building. It is recommended that consideration be made to moving it to the west of the building with an appropriate sound absorbing structure.

Sheet 4 – Is the parking for the Plantation I adequate?

Sheet L-1.0 – As noted above, the plan does not provide sufficient screening to abutting properties

The Planning Board also recommends the following findings and conditions be included in the Comprehensive Permit Decision:

- 1) Exterior construction activity shall take place only between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. Saturdays unless specific approval is granted by the Board. The Petitioner shall post allowable hours on site.
- 2) Signs shall comply with the requirements of Section 6.3 of the Bylaw and shall not be illuminated between the hours of 9:00 p.m. and 5:00 a.m.
- 3) Exterior Lighting shall comply with the requirements of the Bylaw, as amended at the May 2007 Annual Town Meeting.
- 4) Garbage grinders shall not be installed in any of the units.
- 5) All utility lines shall be installed underground. Design and location of utilities must be approved by each pertinent utility company.
- 6) Fire protection measures shall be subject to the approval of the Fire Department
- 7) Affordability Restrictions shall be in perpetuity.
- 8) This Decision applies only to the requested Comprehensive Permit. Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 9) The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder applicable laws and regulations.
- 10) The Board will conduct an annual review to ensure compliance with the conditions imposed within the Comprehensive Permit approved herein. Notification of any deficiencies found through said review will be forwarded to the Petitioner and the Homeowners/Condominium Association. Failure to rectify said deficiencies may result in rescission of the Comprehensive Permit or other zoning enforcement proceedings.
- 11) Upon determination by the Board that the conditions of the special permit have been met, the Board will conduct a review every five years to ensure ongoing compliance with the conditions imposed within the Comprehensive Permit approved herein.
- 12) The Board reserves the right to go on the property to review ongoing compliance with the conditions imposed within the Special Permits approved herein.
- 13) The Petitioner shall grant permission to the Town of Stow, as said agency is determined by the Zoning Board of Appeals to enter and inspect the construction activity. In addition, if the Petitioner or any successor developer fails to conform with the terms of the Comprehensive Permit and/or has not completed the streets and other improvements necessary to service completed units then if the Board has provided the Petitioner with 90 day written notice of its intention to do so, the Board, or its agent, may enter and complete said improvements, using the performance guarantee assets. This authorization shall only extend to the completion of such improvements as are required to service units for which Occupancy Permits have been issued and title has been transferred to individual buyers.

ZONING BYLAW

- 1) *The Planning Board supports the requested exception from the requirements of section 3.2 to allow the proposed multi-family buildings and accessory uses including a playground and parking and access for residents, employees and visitors.*
- 2) *The Planning Board supports the requested exception from the requirements of section 3.2.1, to allow the proposed multi-family building and accessory uses, which are otherwise not permitted.*
- 3) *The Planning Board supports the requested exception from the requirement that an Erosion Control Special Permit from the Planning Board be obtained, provided that the Comprehensive Permit incorporates adequate erosion control measures. In addition, the Planning Board strongly recommends that the Zoning Board of Appeals Consulting Engineer review the Erosion Control Plans.*
- 4) *The Planning Board supports the requested exception from the requirement that a separate performance bond be required to ensure compliance with the erosion control requirements set forth in section 3.8.1.10, provided that the overall bond for the Comprehensive permit include erosion control. It is further recommended that the Zoning Board of Appeals Consulting Engineer review the overall bond amount and that such bond include a 50% contingency, as is standard practice for performance bonds required in Planning Board approvals.*
- 5) *The Planning Board supports the requested exception from the requirement that a copy of the Stormwater Pollution Prevention Plan and the Notice of Intent filed with the Environmental Protection Agency under the National Pollutant Discharge Elimination System be submitted to the Planning Board, provided that such copies are provided to the Zoning Board of Appeals. In addition, it is strongly recommended that the Zoning Board of Appeals Consulting Engineer review the Stormwater Pollution Prevention Plan and Notice of Intent.*
- 6) *The Planning Board supports the requested exception to allow the proposed 30 rental apartments in five three-story buildings and accessory uses in a Residential District, and to waive any requirement for a special permit, replaced by the Comprehensive Permit review and approval process.*
- 7) *The Planning Board supports the requested exception from the requirement that only one main building be placed on any Lot within the Town except within a business, commercial or industrial district, and to allow the proposed 30 rental apartments in five three-story buildings.*
- 8) *The Planning Board does not support the request for the Zoning Board of Appeals to grant a blanket exception. Any exceptions made should be in response to a specific request.*

- 9) *The Planning Board supports the requested exception from the requirement that a copy of the covenant assuring compliance with this provision (regarding maintenance of common drives) be approved by the Planning Board, provided that such covenant be submitted to the Zoning Board of Appeals and be reviewed by Town Counsel.*
- 10) *The Planning Board supports the requested exception, provided that the Erosion Control and Sedimentation Plan for the entire site be submitted to the Zoning Board of Appeals and reviewed by its Consulting Engineer.*
- 11) *The Planning Board supports the requested exception from the requirements of Section 6.3.4 to allow an entrance sign on the neighboring lot along Warren Road.*
- 12) *The Planning Board supports the requested exception from the requirement that an Earth Removal Special Permit from the Board of Selectmen be obtained, provided that all other provisions of the of the Earth Removal Bylaw apply.*
- 13) *The Planning Board supports an exception from the requirements of Section 7.7.2, to allow the access driveway as shown on the plan. A reduction in the width to twenty (20) feet would reduce impervious surfaces and impact on the stormwater management system.*
- 14) *The Planning Board is concerned that a total of 48 parking spaces may not be adequate, and recommends that the same ratio of parking spaces used for the number of units at Pilot Grove Apartments I be used for Pilot Grove Apartments II.*
- 15) *The Planning Board supports the requested exception from the requirements of Section 7.7.5, Interior Area Landscaping Requirements.*
- 16) *The Planning Board supports the requested exception from the requirements of section 8.9.2.1, as all of the proposed will be designated as affordable units.*
- 24) *The Planning Board supports the requested exception from the requirements of Section 9.3.3.5, which requires Site Plan Approval, provided that Site Plan Approval is considered as part of the Comprehensive Permit*

SUBDIVISION CONTROL REGULATIONS

The Planning Board recommends that the Zoning Board of Appeals seek input from their Consulting Engineer with regards to how the road design standards and required improvements sections of the Subdivision Rules and Regulations may or may not apply to the proposed Comprehensive Permit Application.

- 1) *The Planning Board supports the requested waiver, provided that an application fee, sufficient to cover costs incurred by the Zoning Board of Appeals is required.*
- 2) *The Planning Board recommends that the Zoning Board of Appeals seek input from their consulting engineer on the request for a finding that the access driveway are of sufficient width, suitable grade, and adequate construction to provide for the needs of vehicular*

traffic in relation to the proposed use of the land abutting thereon and served thereby.

(iii) *The Planning Board recommends that the Zoning Board of Appeals seek input from their consulting engineer on the request for a finding that the access driveway is of sufficient width, suitable grade, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon and served thereby.*

(iv) *The Planning Board recommends that any proposed lighting, including street lights be installed with full cutoff fixtures as required by the Zoning Bylaw.*

In accordance with Section 9.2.7.14 of the Zoning Bylaw, the Planning Board recommends that a sidewalk be constructed along the entire frontage of the lot. It is further recommended that the Petitioner consult with the Planning Board's Pedestrian Walkway Planning Sub-committee on sidewalk construction standards. Alternatively, if the Zoning Board of Appeals elects to waive this requirement, the Planning Board recommends that the Zoning Board of Appeals require a sidewalk easement and a donation to the Town of Stow, in accordance with the Planning Board Policy of \$35.00 per linear foot, for future construction of sidewalks in Stow.

- 3) Section 7.8, Street Design Standards: The Applicant requests the exceptions noted in the table below to the extent that they are deemed applicable:

| | Requirements for Access Streets | Proposed access drive |
|---|---------------------------------|--|
| Minimum R.O.W. | 50 feet | NA |
| Minimum Pavement Width | 22 feet | 20 feet |
| Maximum grade | 10% | 10% |
| Minimum grade | 1% | 1% |
| Minimum centerline radius | 200 feet | 300 feet |
| Minimum tangent length | 50 feet | NA |
| between reverse curves | | |
| Curb radii | 25 feet | 25 feet |
| Transition areas: maximum grade within 100 feet of intersection | 5% | 5 % for first 50 feet, to 10% thereafter [exception requested] |
| Minimum road crown | 3/8 inch per foot | 2% [exception requested] |
| Maximum average daily traffic | 250 | Unknown. |

The Planning Board supports an exception to allow a reduction in pavement width to 20 feet. The Planning Board recommends that the Zoning Board of Appeals seek input from their consulting engineer on the remaining design standards for the access road.

Additionally, Section 7.8 requires that all streets with sidewalks be designed with a grass strip of at least four feet between the sidewalk and the street. The Plans call for a sidewalk running along one side of the access drive with less than four feet of separation in places. To the extent applicable, an exception is requested to allow the sidewalk to be constructed as shown on the Plans.

The Planning Board supports the requested exception to allow the sidewalk running

along one side of the access drive with less than four feet of separation in places.

- 4) Section 7.5.14: Section 7.5.14 requires that all construction within a road right-of-way be located so as to limit the cutting and filling of soil or subsoil to depths of less than 8 feet. The construction of the proposed access drive will require a maximum cut at the proposed centerline of 18 feet. Therefore, an exception is requested from this requirement to the extent it is deemed applicable.

The Planning Board recommends that the Zoning Board of Appeals seek input from their consulting engineer on the requested exception to section 7.5.14 of the Subdivision Rules and Regulations, which limits the cutting and filling of soil or subsoil to depths of less than 8 feet.

- 5) Section 7.8.2.2: To the extent it is deemed applicable, an exception from the requirements of Section 7.8.2.2 is requested to permit the access drive to exceed 500 feet in length.

The Planning Board recommends that the Zoning Board of Appeals seek input from their consulting engineer and Town of Stow Public Safety Departments on the requested exception to section 7.8.2.2 of the Subdivision Rules and Regulations, which limits the length of an access drive.

- 8) *In accordance with Section 9.2.7.14 of the Zoning Bylaw, the Planning Board recommends that a sidewalk be constructed along the entire frontage of the lot. It is further recommended that the Petitioner consult with the Planning Board's Pedestrian Walkway Planning Sub-committee on sidewalk construction standards. Alternatively, if the Zoning Board of Appeals elects to waive this requirement, the Planning Board recommends that the Zoning Board of Appeals require a sidewalk easement and a donation to the Town of Stow Sidewalk Fund, in accordance with the Planning Board Policy of \$35.00 per linear foot, for future construction of sidewalks in Stow.*
- 9) *The Planning Board supports the requested exception from the requirement to construct the sidewalk along the access drive as shown on the plan, without a green strip between the sidewalk and access drive in certain places.*
- 10) *The Planning Board supports the requested exception from the requirement of Section 7.4.1 of the Subdivision Rules and Regulations, which requires that all lots within a proposed subdivision comply with the requirements of the Zoning Bylaw. The Comprehensive Permit Application is not a subdivision and therefore, this section does not apply.*
- 11) *The Planning Board supports the requested exception from the requirement that a separate performance bond be required for the subdivision of land, provided that the overall bond for the Comprehensive Permit is required. It is further recommended that the Zoning Board of Appeals Consulting Engineer review the overall bond amount and that such bond include a 50% contingency, as is standard practice for performance bonds required in Planning Board approvals. It is also recommended that the form of the performance guarantee be consistent with the requirements of Section 5.3 of the Subdivision Rules and Regulations.*

- 12) *The Planning Board supports the requested waiver, provided that appropriate terms and conditions are included in the Comprehensive Permit.*

THE FOLLOWING EXCEPTIONS FROM THE BOARD OF HEALTH REGULATIONS ARE REQUESTED:

- 1) The Applicant requests that the Board waive, with respect to the Project, the application of all Local Rules and Requirements (as such term is defined at 760 C.M.R. 56.02) that are more restrictive than Title 5 of the State Environmental Code and the implementing regulations at 310 C.M.R. 15.000 et. seq., including but not limited to the relevant Board of Health Regulations. Without limiting the generality of the foregoing, an exception is requested from the Board of Health's Regulation for the Drainage and Minimum Depth to Water Table of Septic Systems, which requires that no system be sited in an area that has less than two-feet naturally occurring pervious material above the high groundwater elevation, and from the requirement that the finish grade of a septic system leaching area not exceed a mean level of two feet.

The Planning Board defers to the Board of Health to make a recommendation on this request for waiver.

THE FOLLOWING EXCEPTIONS FROM WETLANDS REGULATIONS ARE REQUESTED:

- 1) The Applicant requests that the Board waive, with respect to the Project, the application of all Local Rules and Requirements (as such term is defined at 760 C.M.R. 56.02) that are more restrictive than the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the regulations promulgated thereunder at 310 C.M.R. 10.00 et. seq., (the "State Wetlands Requirements") including but not limited to the relevant Wetlands Regulations and Article 9 of the General Bylaws. Without limiting the generality of the foregoing, the Applicant specifically requests the waiver set forth below.

The Planning Board defers to the Conservation Commission to make a recommendation on this request for waiver.

- 2) Section 5.4 (A), General Performance Standards (35-foot undisturbed buffer): The proposed project involves a wetland crossing through the use of a span-type crossing. This will result in permanent alteration with the 35-foot buffer zone. Additionally, although the proposed structures have been positioned a minimum of 35-feet from the edge of the wetland areas, grading, retaining walls and utilities may need to be constructed within the 35-foot buffer zone to accommodate the proposed plan. An exception is requested from Section 5.4 of the Wetlands Regulations to permit the Project to be constructed as shown on the Plans.

The Planning Board defers to the Conservation Commission to make a recommendation on this request for waiver.

THE FOLLOWING EXCEPTIONS FROM THE GENERAL BYLAWS ARE REQUESTED:

- 1) Article 5, Acceptance and Repairs of Private Roads, Section 1: With respect to Warren Road, and, to the extent that the access driveway is deemed a private road or way subject to Article 5 of the General Bylaw, the access driveway, the Applicant requests that Warren Road and the access driveway, although not meeting all of the requirements of Article 5, are of sufficient width, suitable grade, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon and served thereby and accordingly waive strict compliance by the Applicant with Article 5 of the General Bylaws. Specifically, exceptions are requested from subsections (h) and (i). Subsection (h) requires that dead end streets not exceed 500 feet in length. As noted above, the access drive, together with the shared section of Warren Road, will exceed 500 feet in length. Subsection (i) requires that dead end streets include a turn around with a roadway diameter of at least 100 feet and a property line diameter of at least 120 feet. The proposed turn around will have a roadway diameter of less than 100 feet and a property line diameter of less than 120 feet.

The Planning Board recommends that the Zoning Board of Appeals seek input from their consulting engineer on design standards for the access road.

- 2) Article 6, Section 22, Earth Removal: As set forth in the discussion of the Zoning Bylaw above, due to Site topography, construction of the access drive, buildings and other improvements at the Site will require removal of earth from the Site, as set forth in greater detail in this application. Therefore, the Applicant requests that the Board waive the application of Article 6, Section 22 to the Project, and allow the proposed earth removal subject to such review and conditions as the Board determines are necessary and consistent with the Earth Removal Bylaw.

The Planning Board supports the requested exception from the requirement that an Earth Removal Special Permit from the Board of Selectmen be obtained, provided that all other provisions of the of the Earth Removal Bylaw apply.

- 3) Article 9, Wetlands Protection: As set forth above, the Applicant requests that the Board waive the application of Article 9 of the General Bylaws to the Project to the extent it is more restrictive than the State Wetlands Requirements.

The Planning Board defers to the Conservation Commission to make a recommendation on this request for waiver.

E. OTHER RELIEF SOUGHT:

- 1) To the extent that the Plans depict additional conditions and requirements not expressly referenced herein for which additional waivers of Local Rules and Requirements (as such term is defined at 760 C.M.R. 56.02) would be required, such exceptions are requested to the extent necessary to construct the Project as shown on the Plans.

The Planning Board does not support the request for the Zoning Board of Appeals to grant a blanket waiver. All requirements of the Zoning Bylaw should apply, unless specifically waived.

ADDITIONAL PLANNING BOARD COMMENTS

The Planning Board has the following questions concerning the Plan:

In general, the plans do not contain much detail. The plans appear to be in a conceptual stage.

Sheet 3

- 1) The Pilot Grove I does not provide any space for the children to play football, soccer, baseball, basket ball or to run around other than the streets. There is an opportunity for Pilot Grove II to provide a playing field on top of the primary SDS Beds # 1 & #2 in addition to the proposed small playground, which is more appropriate for small children, as is the existing small playground in Pilot Grove I.
- 2) The Planning Board questions whether two dumpsters are adequate for the proposed 30 family units.

Sheet 6 - Details of the wetlands crossing should be shown on the Plan.

The Planning Board also recommends the following findings and conditions be included in the Comprehensive Permit Decision:

- 1) Exterior construction activity shall take place only between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. Saturdays unless specific approval is granted by the Board. The Petitioner shall post allowable hours on site.
- 2) Signs shall comply with the requirements of Section 6.3 of the Bylaw and shall not be illuminated between the hours of 9:00 p.m. and 5:00 a.m.
- 14) Exterior Lighting shall comply with the requirements of the Bylaw, as amended at the May 2007 Annual Town Meeting.
- 15) Garbage grinders shall not be installed in any of the units.
- 16) All utility lines shall be installed underground. Design and location of utilities must be approved by each pertinent utility company.
- 17) Fire protection measures shall be subject to the approval of the Fire Department
- 18) Affordability Restrictions shall be in perpetuity.
- 19) This Decision applies only to the requested Comprehensive Permit. Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 20) The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder applicable laws and regulations.

- 21) The Board will conduct an annual review to ensure compliance with the conditions imposed within the Comprehensive Permit approved herein. Notification of any deficiencies found through said review will be forwarded to the Petitioner and the Homeowners/Condominium Association. Failure to rectify said deficiencies may result in rescission of the Comprehensive Permit or other zoning enforcement proceedings.
- 22) Upon determination by the Board that the conditions of the special permit have been met, the Board will conduct a review every five years to ensure ongoing compliance with the conditions imposed within the Comprehensive Permit approved herein.
- 23) The Board reserves the right to go on the property to review ongoing compliance with the conditions imposed within the Special Permits approved herein.
- 24) The Petitioner shall grant permission to the Town of Stow, as said agency is determined by the Zoning Board of Appeals to enter and inspect the construction activity. In addition, if the Petitioner or any successor developer fails to conform with the terms of the Comprehensive Permit and/or has not completed the streets and other improvements necessary to service completed units then if the Board has provided the Petitioner with 90 day written notice of its intention to do so, the Board, or its agent, may enter and complete said improvements, using the performance guarantee assets. This authorization shall only extend to the completion of such improvements as are required to service units for which Occupancy Permits have been issued and title has been transferred to individual buyers.

Karen Kelleher offered to compile the comments made on the two comprehensive permit applications, review them with Steve Quinn, Planning Board Chair, and send them to the Zoning Board of Appeals.

Zoning Bylaw Grandfather Protection

Steve Quinn reported on a conversation he had with the Town Administrator, Bill Wrigley. Steve relayed to Bill Wrigley that the Planning Board had planned to seek advice from Town Counsel on clarification for “grandfathering” terminology and zoning compliance issues. Bill Wrigley strongly suggested these questions be posed to the Zoning Enforcement Officer, Craig Martin, as it is his job to interpret the bylaws and enforce zoning compliance and it would be best to discuss the issues with him first.

Lori Clark asked if it would be appropriate to ask Town Counsel for a general education on grandfathered uses.

Karen Kelleher explained that Bill Wrigley felt it would be more appropriate to ask the Zoning Enforcement Officer, because he is the enforcement authority in town, not Town Counsel. He also noted that the Zoning Enforcement Officer makes the findings and even if Town Counsel does not agree with the findings made by the Zoning Enforcement Officer, Town Counsel has no authority to overturn it.

The Planning Board decided to compile a list of questions for the Zoning Enforcement Officer. *Karen will send a memo with these questions to the Enforcement Officer and ask him to meet with the Planning Board to discuss them at their meeting of October 5th, 2010.*

The following questions were compiled:

1. What is the role of the Planning Board regarding Special Permits, whether or not it is a Planning Board Special Permit, for sites and/or uses that are not before the Board with an application?
2. What initiates the Special Permit process for a business use i.e. a change of ownership and/or business?
3. What is the definition of “grandfathering”?
4. If an existing grandfathered use changes, what criteria is used to ensure the new use is consistent with prior grandfathered uses.
5. What is the Town’s authority regarding existing non-compliant uses?
6. How does the Town achieve compliance with non “use” Bylaws i.e. lighting, signs, etc.?
7. What is your interpretation of M.G.L 40A: Section 7, paragraph 1 (attached)?

Brian Martinson was skeptical about asking the Zoning Enforcement Officer for clarification on the definition of grandfathering, as members of the Planning Board have a difference of opinion on this topic. He stated that asking Town Counsel would provide a clear interpretation on the subject.

Steve Quinn noted that not all Planning Boards always agree with Zoning Enforcement Officer’s judgments, but it is his call. He reiterated that it is professional courtesy to allow the Zoning Enforcement Officer to answer their questions, before asking Town Counsel.

Brian Martinson stated he did not think the Zoning Enforcement Officer had the qualifications to interpret zoning compliance issues.

Steve Quinn stated that he is the chief officer in determining zoning.

Brian felt it was important to ask the Zoning Enforcement Officer for his reasoning behind his letter regarding grandfathered uses on Mr. Presti’s property, as his decision contradicts members of the Board’s understanding regarding grandfathered uses and he did not discuss the issue with the Planning Board before sending this letter.

Lori Clark agreed that it would help members of the Planning Board understand how he came to the determinations he made without discussing the issues with the Planning Board when they last met.

Karen Kelleher noted that the Zoning Enforcement Officer was responding to Mr. Presti’s inquiry about the status of uses on his property. She reminded the Planning Board they had asked Mr. Presti to research the uses on his property, as they were unsure which were grandfathered. Mr. Presti sent a letter to the Zoning Enforcement Officer describing the uses and asking for a determination as to grandfathering.

Steve Quinn noted, based on a conversation he had with Craig Martin, Building Commissioner and Zoning Enforcement Officer, that he did not think it was his intention to snub the Planning Board by sending that letter to Mr. Presti.

Karen Kelleher said she told Craig Martin that the Planning Board was concerned that he sent the letter without discussing it with them at their previous meeting. Craig told her that he did not intentionally send the letter to blindside the Planning Board. Because the topic of discussion at the last Planning Board meeting was Special Permit Compliance and it did not occur to him at that time to mention the letter he sent at the request of Mr. Presti.

Resident Linda Hathaway of 76 Crescent St. asked to speak on the matter.

Linda noted that even if the Planning Board asked Town Counsel or another attorney for interpretation on grandfathering they could get different interpretations. She stated that even amongst Boards, interpretations could be different. She noted that a consistent answer in regards to this matter might not be attainable. She noted that even if the Planning Board consults with Town Counsel and gets an answer they agree with, there is nothing Town Counsel could do to override the Zoning Enforcement Officer's judgment. She cautioned the Planning Board that they are setting themselves up to be antagonistic.

Linda stated that if there are so many issues with compliance, this might be an indication that the Zoning Bylaws need to be revisited. She suggested the Board consult with business owners in town to better understand their needs.

Linda noted that in the past Stow has had an anti-business stigma and tonight listening to this Board made her feel it is even more so. She stated that she knows the Planning Board wants to do good things for the Town, but that they should work on a way to be friendlier, but still maintaining compliance. As of now, she felt the Planning Board is leaning towards being antagonistic. She noted her respect for all members of the Planning Board and hopes that her comments have brought light to her concerns.

Ernie Dodd noted that the zoning bylaws were not perfect and that they would openly accept changes and input from local businesses. He noted the Planning Board tried to work with Linear Retail over the past two years on signage, acknowledging The Board would support a variance that would allow for a larger sign than the bylaw dictates and suggested they discuss proposed signage before filing with the Zoning Board of Appeals. Ernie said when they finally met with the Planning Board they brought in a complete set of sign plans without discussing them with the Planning Board in advance.

Ernie Dodd also noted that the Planning Board has been working on an FAQ sheet to enlighten businesses and residents about local lighting and sign bylaws.

Ernie stated that the issues on Mr. Presti's site came to light because Mr. Presti had applied to renew his a used car dealership license request with the Selectmen and the Planning Board questioned the grandfathered uses.

Ernie Dodd stated that the Planning Board was frustrated because they felt if they continued to work with Mr. Presti on the issues on his property they could have gotten the site cleaned up, but after the letter from the Zoning Enforcement Officer they no longer have any pull.

Karen Kelleher noted that having Mr. Presti apply for special permits for all of the uses on his property would also mean complying with parking guidelines and other bylaws, and most likely the business would not stay because it would no longer be physically and financially feasible for him.

Steve Quinn stated that redevelopment of this site once water is available is the avenue in which they will see change.

Brian Martinson said the intent of the zoning bylaws is to protect people from their neighbors and that expecting people to not comply with bylaws and to ignore un-allowed activities is not responsible.

Karen Kelleher noted she was referring to “allowed activities” on a non-conforming site. Brian agreed with that, but did not agree with un-allowed activities and did not see how that was being unfriendly to businesses.

Brian Martinson stated that there have been several resident complaints made about the Presti property.

Steve Quinn asked who had complained besides the resident that abuts the property, and noted that her complaint to move the trailer off her property line and to remove the trash in the back of the property, had all been taken care of.

Brain Martinson noted that he and Kathleen Willis had filed complaints.

Lori Clark stated that if after talking with Craig Martin, they still feel unsure, they should inquire with Town Counsel, and that she would side with Town’s Counsel’s opinion as she felt he is the legal authority for the Town.

Lori Clark stated that the Planning Board should not take the issues on Presti’s Property lightly when neighbors have filed lawsuits in other towns and won, for not up keeping compliance.

Linda Hathaway asked the Board if they were concerned with non-compliance issues in other areas of the town or just in Lower Village. She noted that the gas station next to Town Building parks several cars on their lawn, which is a clear violation of the bylaw. She noted that the Board should be careful as to not focus on one area of town.

Brian Martinson stated the reason they have been doing so is because of the number of complaints on that particular property.

Linda Hathaway asked, other than the people mentioned before, how many different people had complained.

Brian Martinson stated he didn’t know.

Steve Quinn questioned if these issues on Mr. Presti’s property were as big of a concern for the residents of Stow as they were for some of the members of the Planning Board.

Linda Hathaway thanked the Planning Board for entertaining her comments.

Deer Field Lane Open Space Parcel: Installation of Well

Karen Kelleher reported that the Town Administrator, Bill Wrigley has been in conversation with the owners of Plantation I, who are looking for a location to drop a well to serve the proposed Plantation Apartments II as well as Lower Village. One site that is being investigated is the Deer Field Lane Open Space parcel owned by the Conservation Commission. Bill Wrigley requested the Planning Board review the Elm Ridge Road Planned Conservation Development (PCD) Decision to see if it would be a possible site for a well. The Conservation Commission is willing to entertain this idea.

Karen Kelleher reviewed the PCD Decision with the Planning Board. The decision states that a well is permitted in the open space to serve the residents of the PCD.

The Planning Board felt the intent of the bylaw was to limit the use to the PCD residents, but stated they would be willing to entertain a change to the special permit if the Zoning Board of Appeals were willing to grant a variance.

Kathleen Willis requested they make clear that the Planning Board would entertain this change only if the well would also be for Lower Village, PCD residents and not solely for Plantation Apartment and/or Pilot Grove project.

Resident Linda Hathaway noted that getting to the well might be difficult as there are wetlands in the area.

Kathleen Willis asked what the status was of the land off White Pond Road owned by the Conservation Commission.

Karen Kelleher stated that the Conservation Commission is not in favor of allowing a well on that site as it is subject to Article 97. The Conservation Commission also stated that the Town would have to exhaust all other options for water before considering well use on the Red Acre Woodland property.

COORDINATOR'S REPORT Continued

Ridgewood AAN

Karen Kelleher asked the Board for their opinion on the draft letter replying to Ridgewood's submittal questions.

Kathleen Willis stated she would like to have a full set of plans instead of just relying on one copy.

Karen will ask for 4 sets of plans so there will be a complete file for the subdivision in the Planning Board office, Town Clerk's office and two sets for Planning Board Members to reference.

Ernie Dodd stated he did not care to have another full set, as they would be the same information, but would like to have a statement in the letter noting Ridgewood is responsible for resolving the legality questions of the condo association at their own expense.

Karen will add language to the letter stating the Planning Board strongly urges Ridgewood to resolve the concerns about condo association legality at their own expense either through their attorney or Town Counsel before they submit their proposal to create individual lots.

EXECUTIVE SESSION

Kathleen Willis motioned to enter into executive session for the purposes of discussing on going litigation related to the Meadow Brook Estates Subdivision and to adjourn at the conclusion of executive session. The motion was seconded by Ernie Dodd and carried by a roll call vote (Kathleen Willis, Ernie Dodd, Steve Quinn and Lori Clark).

The meeting adjourned at 11:07 P.M.

Respectfully Submitted,

Kristen Domurad
Administrative Assistant