

TOWN OF STOW  
PLANNING BOARD

Minutes of the June 10, 2015 Planning Board Meeting

Planning Board Members Present: Lori Clark, Ernie Dodd, Len Golder, Steve Quinn,  
Margaret Costello

Voting Associate Member: Mark Jones

Lori Clark called the meeting to order at 7:01 pm

### **Discussion of Meeting Minutes**

#### **Meeting Minutes of May 20, 2015**

*Ernie Dodd moved to approve the Minutes of May 20, 2015  
Steve Quinn Seconded.*

**VOTED: 5-0 unanimously in favor (Lori Clark, Margaret Costello, Ernie Dodd, Len Golder, Steve Quinn).**

### **Public Input**

None.

### **Member Updates**

Mark Jones asked when the final meeting of the Center School Building Committee might be. Steve Quinn said that they should be finalized shortly. Mark Jones said the School Committee may need to appoint someone if it goes on too long.

Mark Jones said the Selectmen talked about School Committee and likely future building plans for the high school, adding that there may be more informal conversations with the Selectmen to come.

Ernie Dodd said he attended the meeting to discuss Chapter 61 offering regarding the Ridgewood property and the consensus form the different Departments is to give up the right of first refusal. The right was waived.

### **Planner's Report**

#### **Minute Man Realty Chapter 61 Notice**

Karen Kelleher reported that the Board of Selectmen held a Joint Boards meeting last night (April 9) and voted to waive the Town's right of first refusal.

### **Lower Village Common Archeological Survey**

The Lower Village Archeological Survey has been completed said Karen Kelleher. Based on a preliminary review the area is characterized by multiple, relatively recent fill deposits containing no potentially National Register –eligible deposits. This is good news in terms of the Lower Village street and drainage improvements and upcoming MassWorks Application. PAL is now working on the technical report.

### **Lower Village Water**

Lower Village Property owners are now working with an engineering firm to drill a test well, Karen Kelleher reported.

### **Complete Streets Policy**

Karen Kelleher said staff have continued to work on a Complete Streets Policy and have a draft in hand that has been vetted by boards, committee's and departments. The next step is to present it to the Board of Selectmen to be adopted. Once adopted by the Board of Selectmen - a town meeting vote is required.

### **Lower Village**

Staff will be preparing an application for the next MassWorks round of funding. It is hoped that the progress made with regard to the Complete Streets Policy, Archeological Survey and Water will make us more competitive for MassWorks funding.

### **323 Great Road**

Karen Kelleher said staff continues to work with the Boards and Committees who submitted proposals for 323 Great Road. Based on discussions at the April 29<sup>th</sup> meeting we expect to be in receipt of revised proposals. The Conservation Commission, Recreation Commission, Open Space Committee and Stow Conservation Trust all proposed some version of an accessible park and agreed to meet to see if they can come up with a common plan.

The Stow Municipal Affordable Housing Trust agreed to come up with a more detailed plan. It is hoped that we will have a recommended plan - maybe two - for the Selectmen to Consider by late July, early August.

### **Cemetery Committee**

Karen Kelleher reported that staff will be meeting next week with the Cemetery to discuss their proposal for a building at the Brookside Cemetery.

### **Pine Bluffs**

Karen Kelleher directed the Board to a draft memo in their packets.

The Planning Board discussed upcoming schedules.

Mark Jones is available on the 17<sup>th</sup> – the 24<sup>th</sup> not able to attend

Ernie Dodd out 7.6 – 7.15

Steve Quinn is out Tues and Thurs starting June 29<sup>th</sup>

June 23<sup>rd</sup> deliberation meeting  
July 1<sup>st</sup> they can decide about schedule from there.

### **Bose Special Permit Modification and Exterior Lighting Special Permit**

The Planning Board deliberated on the Bose Special Permit Modification and Exterior Lighting Special Permit.

Mark Jones said Bose is planning to keep 1/3 of the main parking lot lit throughout the evening. Mark Jones said upon questioning they said yes to the question that the hours of operation are from 7am-7pm. Mark Jones said he does not think they need 150 spaces lit through the night, even though Bose said they needed it for their security purposes. Mark Jones said he would like to either cut the space down by half or have them on motion detectors to take the opportunity to keep the light down. Ernie Dodd said they often hear that lights are necessary for security. Ernie Dodd said they're security people are telling them that the light is necessary. Mark Jones said this is about light pollution in general which can be seen in other parts of Town. If they need security they can keep the first row of lights on nearest the building, he said.

Len Golder said that he has never had any reason to object to the lights and he has lived nearby for nearly 25 years. Len Golder said he would defer to issues of security and liability. Steve Quinn said Bose's response was that they have reviewed with security and this was their opinion. Mark Jones said he would prefer motion detectors and cut down the field that is always on and use the opportunity to uphold the intent of the lighting bylaw.

Len Golder said that he believes that the lighting bylaw is there to prevent unnecessary light not to curb it where it is necessary. Margaret Costello said she believes it would make sense to cut down on the amount of the lighting. Ernie Dodd said that no abutter complained about the lighting at the meeting and they are adding shielding to further reduce any lighting spilling over the property line and their plans are a significant reduction over the amount of lumens at the site now. Margaret Costello said she is 50/50 but if they need to get this done she is OK with leaving it as it is. Ernie Dodd said the issue was raised, they responded and the Board did not object. The Board generally agreed that it is OK as it stands.

*Steve Quinn moved to approve the exterior lighting special permit.*

*Ernie Dodd seconded*

**VOTED: (4-1) (Margaret Costello, Len Golder, Steve Quinn in favor; Mark Jones opposed) Lori Clark abstained.**

### **271 Great Road Special Permit Continuance**

Lori Clark opened the hearing at 7:30pm.

Lori Clark allowed the applicant to present information and then public comment prior to Planning Board questions and answers.

Greg Roy of Ducharme and Dillis Civil Design Group presented the new changes to the plans. Greg Roy said the hearing started in April where they took comments from abutters, the Board and Places Associates. The Parking configuration was initially revised to shift away from property lines. Greg Roy said the applicant has added a lot of landscaped buffering and additional screening in the rear of the property, 350 linear feet of privacy fencing, eliminated parking loading areas in the rear and consolidated the parking and provided screening at the back of the proposed patio area to mitigate concerns of the abutters regarding visibility issues.

Today there are a few minor changes regarding comments received at the last hearing and volunteered by the applicant. The biggest change is reducing the patio from 1100 to 700 sq ft. and committing to a maximum of 14 outdoor seats which is a third of total occupancy. At the last meeting the lighting details were presented and one of the comments was moving the walpaks from the front side of the building for added screening to rear of the property. Greg Roy said they are keeping the existing light pole features to preserve the historic character and changing out the luminaire to reduce the lumens, which still has the project under the 10,000 lumen threshold for a special permit. Greg Roy said the applicant has added additional details to the landscaping plan and added street trees along the frontage. They have added the location of the grass and bark mulch area to provide definition and swapped a few plantings that were close to the stormwater management area that may be sensitive to salt. Greg Roy said the proposed dumpster screen and pad with 6' high privacy fence has been added to match what is shown on the plan. The drainage basin was tweaked a bit. Other than that there are no other significant changes he said.

Lori Clark asked the Board if there were any clarifications. Karen Kelleher said there is an email from Places Associates in the place of a formal letter. Lori Clark read from the Places Associates letter by Sue Carter. Greg Roy said glacial till was added to the plans.

Mark Jones asked what the target radius was for the moving of the stormwater system. Greg Roy said they were slightly too close to an existing well which needed to be one hundred feet.

### **Public Comment**

*Gary Bracket of 19 Cedar Street in Worcester and representing Diane Johns and Karen Fleming* said that what the Board has before it is a site plan and special permit for a mixed use development at 271 Great Road. Gary Bracket said he looked at the zoning bylaw and the sections that relate to this type of use. He read from the sections of the zoning bylaw in relation to uses in the residential district, noting that they are typically rural and single family. Gary Bracket read from section 2.3.5 regarding zoning relief. Gary Brackett read from Section 3.3.2.1 regarding uses in the businesses district subject to special permit, noting the mention of retail stores and restaurants. If the proposed use was going into the business district it would require special permit relief, he said. The table of use regulations say that retail service establishments are not allowed in residential district. In the principle uses, restaurants in a residential zone not allowed.

Gary Brackett said he started practicing municipal law in 1975 and the Zoning Act adoption was in part due to the fact that planning boards were too lax in issuing variances for uses. Gary Brackett said that the current variance laws are a high bar to meet. If a city or town is going to allow use variances they are going to have to specifically require that the use variances are allowed, he said. Gary Brackett said that bylaw section under consideration for this proposal makes it appear that a use variance is being allowed under a special permit granting. The current bed and breakfast is residential in nature and the café and retail operation is going to be a use active more hours than the current use. Gary Brackett said he is giving credibility to the bylaw, although in this case the use and the intensity of the use that is being proposed is not going to be a situation where people sit down for hours at a time but more of a heavy overturn of customers that would be a traffic impact on great road and an increase over the traffic currently at the site.

Gary Brackett said 151 Crescent Street sits a little higher than other homes and wants to clarify what the original size of the patio is compared to the size now. Greg Roy said he was giving an approximation at the time. Lori clarified it was 700 square feet. The house on the hill can have a view into the rear yard even with the screening, Gary Brackett said.

Gary Brackett said a loss of privacy is a concern and the caliper of the plantings are rather small and the fence that abuts the property ends at the corner where the Fleming property area is exposed with only three plantings shown in the corner. Gary Brackett said his client is concerned about negative effects on property value and a concern over lack of experience of the applicants. Gary Brackett noted his client is also concerned regarding the negative impact with regard to water supply which has been addressed with the consultant. Gary Brackett noted the possibility of a liquor license and the applicant's would not want to see that. Gary Brackett said the main issue is the patio in the rear and would like to see it moved, and would like to see the prohibition of a liquor license without an amendment to the Special Amendment first.

Diane Johns said that the patio is the main objection and if it is relocated then it would not impinge on her. She lives on a hill and the acre goes down to abut the Stowaway Inn. A fence around the patio takes care of the lower property but does not take care of her house, porch and activities around the house and she said she would feel on display all the time.

Lou Levine, representing Phillips Heritage LLC., said that the bylaw clearly acknowledges that the building is a historic structure and older than the Town hall and is not doubted to be a historic building. Lou Levine said that some of the historic buildings may be in a residential district and the planning board can allow uses not otherwise allowed in a historic building. Every building is different and presents different challenges. This is not a use variance, said Lou Levine, rather the Town specifically said that the Planning Board has the right to issue a Special Permit for the use. The bylaw reads very well and it stands out very clearly. The Planning Board should not think that a provision of their bylaw is illegal, he said. This is a Special Permit and Site Plan Approval and is a discretionary permit. Planning Board actions have to be reasonable, he said. This building being put to an economically viable use and he said he thinks it is a bad idea to get into the discussion of judging the resume of business owners.

Lou Levine said that the reason that the fence does not continue is due to the high elevation of the home at 151, which negates the need for a fence that would serve no purpose. The Planning Board acknowledged that at the sitewalk, he said. Lou Levine said the home is 250 feet away and is a long distance for privacy issues to be cited. Lou Levine said the Applicant wants the plan to be right. Water supply issues have been attended to by the consultants, adding that the Applicant exceeds all requirements for well spacing and setback.

This is the kind of use that needs to go in a building like this, said Lou Levine. The Bed and Breakfast did not work. What would go in here? Gift shops and cafes are typical uses for this kind of building he said. This building or lodge historically served meals Stow travelers back in the day, adding that this is a reasonable use for this kind of building and it is ok for the neighborhood. Lou Levine said the traffic issue is not fair given the abutter's driveway is on Crescent street. Lou Levine said the number of spaces are in line with the bylaw and it is the Board's judgment call to make.

Lou Levine said that With respect to liquor license, it is a Board of Selectmen permit and decision. If an application for a license comes up everyone gets public notice and the Selectmen can decide.

Lou Levine handed out a draft decision.

Brian MCarthy of 155 Crescent Street asked where the liquor license stands? Lori Clark said that although she is not voting on this application, the abutter would be asking the Planning Board to add a condition the Board does not have purview over. Brian MCarthy said that the traffic on Crescent Street is an issue because Great Road causes traffic issues that then back up on Crescent Street.

Don Hawkes of 9 Dawes Road, presently on the Board of Selectmen and serving as liaison to Planning Board, said at the Board of Selectmen meeting that he intended to support the applicant, his general premise that Stow is so short on business properties and find appropriate uses for historic buildings and provide opportunities for entrepreneurial efforts. What would happen if this was not allowed? It could be demolished and a modern looking home could be built on the central artery of the Town to its detriment, he said. Stow is looking to find ways to be a welcoming community to business and recently appointed an Economic Development and Industrial Commission to help build on the assets of the Town. It appears that reasonable compromises have been made and strongly encourages the Planning Board to find a compromise.

Gary Brackett said he would disagree on not prohibiting a liquor license. Gary Brackett said that with approving a change of use, they request that they prohibit a liquor license on the property. The zoning bylaw has as the power to place a limit on the use of the property if they are going to approve the use, he said. At that point, Gary Brackett said, the applicant would need to seek an amendment to evaluate the future business. After the amended decision was written, the Selectmen can decide to issue their permit.

Lou Levine said the planning Board could impose such a condition but that it is not a good idea due to the fact that it perpetuates more hearings and would create a subset of restaurants for serving and non serving restaurants, which is not stated in the bylaw. If the concern is great, than a modification of a special permit is needed if the use evolves.

### **Planning Board Comment**

Len Golder clarified the abutter issues and it appears that the location of the patio is the main issue. Could the patio be modified? Greg Roy said they have done a lot of thinking about the patio location and with respect to use and renovation plans, including look and feel, they have tried to find different spots that mitigate the concern and preserve functionality. The patio is going to be where the proposed café use is going to be. Len Golder asked them to further explain. Greg Roy said to his clients the location matters.

John Abeyda said he would be a co-operator of the business and said the patio is placed because it is adjacent to the indoor seating and where the service counter for the café is going to be. John Abeyda said they arranged the bumpout addition to shield the patio from the line of sight from the neighbors. Lori Clark clarified that the logical flow between the inside and outside of the building was part of the decision. Greg Roy said that the earlier use could have put a patio in the spot right now and is not atypical in any part of Massachusetts. Greg Roy said the patio is not proposed right on the property line and is several feet from the line and they have really thought it through in a functional way.

Greg Roy said they have proposed trees in the one line of sight rather than a fence, which would not make any sense.

Shirley Burchfield said they are talking about 14 seats which is analogous to a large family dinner and this is what is needed to make it a successful business. The use will be very seasonal in nature and not year round.

Ernie Dodd said they could put the patio in right now if the Bed and Breakfast wanted to. The Buildings and attachments require a building permit but are well within the setbacks if they wanted to go forward. Everything they are proposing the present owner can do, he said. Ernie Dodd said it is a space that would be a very large home and the chance of the structure lasting is not good. Ernie Dodd said the use fits within the purpose of bylaw. Ernie Dodd said the screen proposed will help mitigate the activities. Ernie Dodd said that the home on the hill was too high for any fence and the trees and fence around the patio has been added to block direct view. Ernie Dodd said he feels that the applicant is making adequate provisions to protect abutters.

Steve Quinn said that he remembers that the intent of screening the patio was to protect abutters.

Shirley Burchfield said that they would like to show off the nice garden they are expecting to have near the patio.

*Ernie Dodd moved to close the public hearing for Special Permit and Site Plan Approval for 271 Great Road.*

*Margaret Costello seconded.*

**VOTED: (4-0) Unanimously in favor. (Margaret Costello, Ernie Dodd, Len Golder, Steve Quinn; Lori Clark Abstained).**

### **Collings Foundation Inc. Site Plan Approval and Erosion Control Special Permit Deliberation Session**

Lori Clark notified the Audience that the meeting tonight is for deliberation on the Collings Application and is not a public hearing. Lori Clark reminded the Board not to ask the applicant and public any questions as they are trying to stay to a closed hearing and trying to only look at the items submitted to the Board.

Lori Clark suggested the Board only talk about the Dover Amendment.

Lori Clark discussed items to think about as the Board discusses the Dover Amendment. The definition of educational is not defined specifically in the law related to Dover but is a judgment call and that any other definitions from other bodies can be used as a reference, it does not necessarily transfer directly to Dover. If the Planning Board determines that it is partially educational they still need to determine that it is primarily educational and that determination must be judged by the application before them and the activity on the site in question. This is not necessarily all or nothing as certain activities could be excluded from inclusion in Dover, except perhaps for some certain accessory uses to educational uses.

Lori Clark said there was a lot of discussion regarding residents not being in support of the application. The tools the Planning Board has before it are the Massachusetts state laws and the zoning bylaws. Lori Clark clarified that just because someone does not like a plan they still have to reference the tools before them when making a decision.

Lori Clark suggested that the Board discuss the Board's interpretation of what they believe application primarily entails, to then work their way to the educational use. Lori Clark clarified that she is looking for an opinion on the scope of the project and what Board members see.

Ernie Dodd said the primary objective appears to be for the provision of a museum and supportive activities around that use. Mark Jones said part of it is how to house a collection of objects and figuring out how to house them from an applicant's perspective. Mark Jones said it is a display building and a warehouse, where maintenance will also take place, and items will be viewed.

Len Golder, said he believes the application is for a museum with activities relating to it, including collections for viewing and activities relating to that museum.

Lori Clark said that the application is clearly about a museum and a display of the collection and if you look at the majority of what people are doing, the events provide the most volume of people on the site. The highest volume of activity from an interaction standpoint



is the large events. Ernie Dodd said it could be a draw to bring people from the big events. Len Golder said the activities and events could relate to the theme of the events.

Steve Quinn said that the museum and what it houses is the biggest display and the primary purpose. Not a different use than the current use, rather a magnification of the use. Lori Clark clarified that the additional activities are meant to show the collection in action and is a magnification of the typical museum activities.

Mark Jones said that the primary activity outside the building may or may not be relevant to the decision being sought. The population that is drawn to the outside activity is more than to the museum. Mark Jones said that it was said that 1000 -1500 cars over the course of the weekend are there to see the events and the building is ancillary to see those events and much of the site plan is designed to move people in and out of the grounds.

Len Golder said that it is a museum and the ancillary activities do have some connection. Lori Clark said she is hearing that the real reason for coming to the events is to see the enactments and other presentations. Mark Jones agreed, adding that the building is adjunct to the event use. Ernie Dodd said that is true in some cases but in other cases people may go inside to view objects. If there is action people are going to stay outside, he said. The objects outside are a subset of what is inside, he said.

Lori Clark said that when you are in the museum looking at the display there is information explaining the viewing and that may or not may not be happening outside. Steve Quinn said the outside events are about seeing the information in action. Lori Clark said that viewing objects in action does not necessarily provide knowledge of those items. Ernie Dodd said that they have proposed different ways of showing the attendees what they are looking at.

Lori Clark said they at least have a description of what the activity is.

Ernie Dodd said that they should discuss the three provisions of the Dover Amendment. Must be a Corporation; must be non-profit and agree to conduct business in a certain way; and must be educational, which is partly defined in some of the court cases.

Ernie Dodd discussed IRS definitions, saying although they do not have bearing on their decision on the educational matter, the Dover Amendment said that case law requires some sort of curriculum, that the use need not be accredited but have a curriculum, that there are instructors, goals for the curriculum so that people can take those courses and evaluations of that learning. Ernie Dodd said to be educational the applicant must have students that take classes and there must be testing regarding the attaining of goals. The Applicant must show value for taking the course in a broader sense. Ernie Dodd said in this case there is no government imposed criteria like a school. Ernie Dodd said schools and classes are necessary for Dover Amendment.

Barbara Huggins, Stow Town Counsel, said she respectfully disagrees with Ernie Dodd regarding requirements of Dover. Barbara Huggins said she does not believe that the cases

say you must have classroom, students, etc. There are cases such as group homes for developmentally disabled children and other types of uses that were granted Dover protection. The Court's say in Metrowest that they list things the YMCA does not have but that does not mean that all protected uses must have those things.

Ernie Dodd said he does not mean to put it that way. Ernie Dodd said they still have to provide some sort of structure and have more than instruction taking place over just one day. Lori Clark said there is no case law on museums. Len Golder said he would not exclude a museum as being educational.

Barbara Huggins, Stow Town Counsel said is it not a museum, but rather this particular use. There may be more than one use involved in this proposal and there may be multiple uses that need to be discussed, she said. Some of the cases have uses that are interfering with zoning bylaws and where there is an issue with neighbors the court allowed some of their proposed activities and not for others.

Steve Quinn said there is not a black and white decision to be made and it comes down to Board member's opinions. Steve Quinn said when he thinks of museum he thinks of school field trip. Can read graphics and see things in action. If it were found to be Dover protected, conditions on the use could be conditioned to be beneficial for the neighborhood. How would it affect the neighborhood to find it educational versus non-educational, he asked? Len Golder said that he thinks it gets to another issue and the area of controversy is not just about another building with other artifacts. Lori Clark said that she would not suggest a judgment on Dover based on whether they think they can add conditions on the site and improve the impact.

Steve Quinn said a museum is educational. Len Golder said he agrees. Mark Jones said he does not have an opinion on whether this particular museum is educational and is not debating whether a museum is educational. Mark Jones said the fairground event does not qualify as an educational event but is more of a show. Incidentally there is a museum being built, he said. Mark Jones said the use is not permitted, no site plan review has taken place and the events do not seem educational. Ernie Dodd said he agrees and the museum is not educational. Ernie Dodd said he learns in class and sees objects that relate to that learning in a museum.

Ernie Dodd said kids do not understand what is being presented most of the time. College and high school kids look into books and in college they get tested on that knowledge. Len Golder said the city would pay to take kids on field trips and see things presented and does not recall ever getting a test. Len Golder said that another thing that he wants to point out is the Stow Minuteman and is that educational? Len Golder said that the events may have an aspect of being a fair or a celebration. Margaret Costello said there is a distinction in that the current use houses a collection and doubts whether that is educational.

Town Counsel said the Applicants proposal entails a number of uses, including large events, a museum building and other component uses. Reading from Metrowest, Barbara Huggins said in the aggregate is the overall use educational and educationally dominant. In the

most recent application there are tours, interactions with other educational organizations, and events with other groups.

Lori Clark said she could see the museum use as educational, however questions the larger events and although they are historical, are they primarily educational? She does not see the events as a primarily educational use.

Margaret Costello said when she was invited on the tour, it was interesting, but not educational. Len Golder said even if they had an educational component, he could not agree if it was impinging on the rights of the abutters.

Lori Clark said that the June 23 meeting will be dedicated to deliberation.

Barbara Huggins advised the Board that case law is not referred to as new information as it does not come from the applicant or the public.

The Board asked Town Counsel what would happen if the use was approved and the operating foundation that has underlying operation of a corporation below it were to cease to exist. If that ownership disappears is there any case law to help the Board determine what happens after the current users are no longer there? Barbara Huggins said she has not seen any Dover case when the protected user is no longer using the land.

Barbara Huggins said that if there is a finding that some uses are protected and the eligible entity is Dover protected the use could continue. Ernie Dodd asked if it could be conditioned that when it was no longer protected? Barbara Huggins said that when it was no longer an eligible entity it is subject to an enforcement action.

### **Bose Special Permit Modification Decision**

The Board agreed that on page 5 the reference to DEP should instead say "Stormwater Management Standards."

The Board discussed a finding regarding earth removal should be removed as it was not discussed at the hearing. Lori Clark said if it is not commented on, findings cannot be made. Karen Kelleher said the Board can speak to the issue when it is in front of the Board.

*Ernie Dodd moved to approve the Bose Special Permit modification as modified.*

*Steve Quinn seconded.*

**VOTED: (4-0) Unanimously in favor (Margaret Costello, Ernie Dodd, Len Golder, Steve Quinn); Lori Clark abstained.**

**Meeting Adjourned.**

**Respectfully submitted,**

**Jesse Steadman**