

WAREHAM PLANNING BOARD MINUTES

Monday, November 22, 2010

7:00 p.m.

Memorial Town Hall

Lower Level Cafeteria

Wareham, MA

I. CALL MEETING TO ORDER

The meeting was called to order at 7:00 P.M.

II. ROLL CALL

Members Present: Mike Baptiste, Chairman Pro Tem
Alan Slavin, Clerk
Mary Davey Morley
Mike Fitzgerald, Associate Member

Members Absent: George T. Barrett
Charles Klueber

Also Present: John M. Charbonneau, Town Planner
Walter Cruz, Board of Selectman Liaison

III. PRELIMINARY BUSINESS

A. Approval of meeting minutes: September 27, 2010, October 18, 2010, & November 8, 2010.

The minutes will be reviewed and a vote taken later in the meeting for the September 27, 2010, October 18, 2010 and November 8, 2010 meetings.

B. Extension of approval of Site Plan for 33-35 Tobey Road

Present before the Board: Mike Giancola

Mr. Giancola is requesting an extension due to lack of tenants and the lack of finances in the market which constitutes the need for an extension. Mr. Baptiste informed Mr. Giancola the State just approved the Permit Extension Act which essentially deals w/ any permit or plan approval that was issued from August 15, 2008 to August 15, 2010 is automatically extended for two years. In this case, Mr. Giancola is exempt because there was an extension until this present date and the different conditions are quite lengthy. There is one condition. It is can an approval holder refuse an extension and they say no. So, Mr. Giancola can have an extension.

Ms. Davey Morley asked about the qualifying period & how this is going to fit in.

Discussion ensued re: the Permit Extension Act. Mr. Charbonneau offered answers & clarifications to the Board members questions.

Present before the Board: Attorney Richard Serkey

Attorney Serkey addressed the Board. He stated based on what he has heard, he would assume the current extension would expire in February 2011, however, under that statute it will now expire in February 2013. Thus, there is nothing he needs from the Board. Mr. Charbonneau stated due to the enactment of this Act, he has asked Town Administrator, Mark Andrews about having Kopelman & Paige come in and tutor staff on this law. Even though it triggers automatic extension, staff still need to know about it and he feels a paper trail is necessary to clarify things.

Mr. Charbonneau stated he will send a letter to Mr. Giancola after this meeting stating that yes, his Special Permit, pursuant to Chapter 240, Section 117 MGL is hereby extended to the year 2013, so that there is a paper trail showing when the new date of expiration is. Ms. Davey Morley concurred.

C. Form A – Preservation Lane – c/o GAF Engineering, Inc.

Present before the Board: Glen Amaral, G.A.F. Engineering, Inc.

Mr. Amaral informed the Board that this plan is a division of one lot and that Preservation Lane is an approved definitive subdivision that is off of Cromesett Road on the westerly side. One lot has been taken and redivided to create a Lot 28 & 29. There is a drainage easement which was Lot 31 (or used to be Lot 25). They are taking a piece of that and adding it to Lot 29. He noted the placement of the zoning circle, thus, a part of the drainage lot had to be taken. The drainage easement will stay in place under the Certificate of Title, but there is enough upland to create that one additional building lot. The frontage for Lot 28 will be off of Preservation Lane. The frontage for Lot 29 will be off of Cromesett Road. The reason they are calling these, even a small sliver of a lot is because the Land Court requires the parcel to be called lots and not Parcel A or Parcel B. There is a note on the plan showing the intention of Lot 30 is to be combined with Lot 29. The reason for this is they were all under the same ownership and the lines were re-defined.

Mr. Charbonneau asked about the sliver of Lot 30 to Lot 29. He asked if this will give the minimum frontage. Mr. Amaral stated it would.

Mr. Baptiste asked Mr. Amaral if there is a dwelling on Lot 24. Mr. Amaral stated he did not know. The parcel that is to be divided was the total area of Lot 28 and Lot 29. It started at Cromesett, went to the west, came up to the north and beside Preservation and back out toward the Weweantic River. That was all one lot.

Mr. Baptiste asked about Preservation Lane, what was existing, and if it was a driveway. Mr. Amaral stated that it is paved, but it may be just a binder.

Ms. Davey Morley asked if this is all about the sliver of land. Mr. Amaral said no. He explained that they are taking one lot and creating a new lot which is part of the subdivision. Mr. Baptiste asked if the easement will still go across Lot 28. Mr. Amaral said he will have to look at the certificates.

Mr. Baptiste stated Lot 16 seems to be a sizeable parcel and the road runs right into it. He is sure people have rights to pass and repass in their deed. Mr. Amaral agreed and stated there is a Right of Way. Mike Baptiste noted he wants to be sure that the Right of Way and Ancient Ways in the Town do not disappear.

MOTION: Ms. Davey Morley moved to approve the Form A plan for Preservation Lane. Mr. Slavin seconded.

VOTE: Unanimous (4-0-0)

D. Form A – 34 Pierceville Road – c/o G.A.F Engineering, Inc.

Present before the Board: Glen Amaral, G.A.F. Engineering, Inc.

Mr. Amaral noted he submitted a check to Mr. Charbonneau that may be insufficient because he used the old fee schedule.

Mr. Amaral explained this ANR plan is a division of the existing parcel that is located on the north side of Pierceville Road located just northeasterly of Papermill Road. Two lots are being created that conform to zoning. There is an existing dwelling on Lot 2. Originally, it was divided so there would be sufficient area and frontage to make sure that there would be two lots in the future. There is the existing house & a shed (more like a pole barn for storing wood; it's an open type shed). There is a driveway that is going to reconfigure when the lot next door is sold. The offsets are shown on the plan.

Mr. Charbonneau asked if the driveway would be reconfigured to access dwelling #39 for the driveway to be solely on Lot 2. Mr. Amaral said yes. Each lot would have a separate driveway. Mr. Charbonneau stated if the Board so chooses, Mr. Amaral could add something stating that. Mr. Amaral stated the driveway is an existing gravel driveway and if a house was constructed on Lot #1, the driveway would be shifted down onto Lot #1. The driveway for Lot #2 would be reconfigured so it would be all on Lot #2.

Selectman Cruz asked if the engineer would be taking 15' from each side (of the existing gravel driveway) so there would be a 30' easement. Mr. Amaral answered no, there won't be any easement there. The driveway can be right up to the property line, but there will be separate driveways to access each lot. The driveway is in the middle so it is all one big parcel anyway.

Mr. Baptiste expressed one concern w/ this Form A which is the Board cannot put conditions on it. The Board can encourage the applicant to take it back, change it, and

come back with a revised plan or deny it because the Board did not like a common driveway as it is shown on the plan. Mr. Charbonneau added that he has seen stipulations on Form A plans where the Planning Board states "no further subdivision on this lot". Mr. Baptiste stated his understanding is that you cannot condition a Form A. If the Board should condition this, he does not feel it would hold up in court. Mr. Amaral stated this is just a driveway. Mr. Baptiste stated the Board has had discussions about driveways before, a lot of things are said, however, a lot of things are not done.

Discussion ensued among the Board and the engineer re: the driveway shown on the plan. Mr. Amaral stated he doesn't know where the driveway would be until a Site Plan is done. He asked the Board if it would be acceptable to have a note on the plan that the driveway access will be provided to Lot #1. He noted it's hard to show a driveway unless a site plan for the lot is developed.

MOTION: Mr. Slavin moved to approve the Form A for 34 Pierceville Road w/ the condition that there will be a note on the plan indicating that driveway access will be provided to Lot #1. Ms. Davey Morley seconded.

VOTE: Unanimous (4-0-0)

E. Form A – 8 & 10 Fannies Lane, c/o GAF Engineering, Inc.

Present before the Board: Glen Amaral, G.A.F. Engineering, Inc.

Mr. Amaral told the Board this is a continuation of a plan that was presented on November 9, 2010, however, the Board asked that it be sent out to Town Counsel at that time for comments. Mr. Amaral did not see a letter. The plan that is in front of the Board contains some revisions. There is an indication of the approximate width of the gravel way which is called Lot #1. There is an increase of the width of the proposed Right of Way, a defined area for a Right of Way of 16 feet that crosses between Lots 2 and Lot 3. The Right of Way into the property exists so the lots have access, although going from the existing lot, the pie-shaped piece, which is now part of Lot 3 and 2, there was no defined location of the Right of Way. It is the attempt and intention of the plans to define a location of the Right of Way to eliminate any further problems that could occur down the road, for example, people arguing where they could and couldn't cross. The houses have adequate access & utility services. He discussed #10 Fannies Lane and stated he can follow that back to 1917. It was a house. #8 Fannies Lane, he can follow that back to the 1930's. Lot #1 has an existing dwelling on the lot, but because of the poor descriptions in the area, there was a gap between #8 Fannies Lane and this particular Lot 1. There was an attempt to clean up any problems in re: to the boundary lines.

Mr. Amaral stated the attorneys looked at it and mentioned that ^{no new} lots were being created. They are redefining boundaries & are not actually creating new dwelling lots. There are three residential structures, there are three lots, and there still remain three lots. Dividing Lots 2 and 3 is more user friendly rather than having a pie-shaped piece that is

there, but you really can't use the portion of what is now on Lot 2. The 15' Right of Way is on Lot 2 that is extended to 16 feet.

Mr. Charbonneau advised the Board that he went out to the site and measured approximately a 16' width. He contacted Mr. Amaral on Friday and suggested that the engineer maintain at least 16' throughout the proposed Right of Way.

Mr. Fitzpatrick and Ms. Davey Morley had questions and discussion ensued re: the frontage of lots, etc.

Mr. Nazhi Elkalassi requested that the Board recognize him.

Present before the Board: Nazhi Elkalassi

Mr. Elkalassi informed the Board that he bought Lot 1 at a land auction for \$91,000. He then bought #8 Fannies Lane from HUD and #10 Fannies Lane was sold at a Town auction for \$15,000.00. The reason the Town sold it for \$15,000.00 was because nobody could get to it and the owner was supposed to sell it back to Mr. Elkalassi because he was the only one with a Right of Way. Mr. Elkalassi stated he is trying to make things clean for the Town and everybody so there is no confusion. He is not creating lots. He doesn't understand what the fuss is about. He wants the Board to help him do this. He is trying to fix the lot lines. He again stated he is not creating lots. Discussion ensued.

Mr. Slavin indicated his only concern was the legal opinion and that he did not want the applicant to do something that he was not supposed to do. Mr. Elkalassi stated if anything, the attorney would go back to him and not the Board and that he has done this before.

Mr. Charbonneau informed the Board that his concern is #8 Fannies Lane and his understanding is that when a lot line is moved, an existing non-conformity should not be made worse or create a non-conformity. This is the issue right now. It is a setback from a lot line, not from a road. The problem is the other house, but it has to be taken down anyway and a new one put up there. There will be plenty of room on this lot.

Mr. Baptiste stated the Board has two options. The applicant can withdraw without prejudice, go back and change the lot line, and come back *or* the Board can deny if the Board is not comfortable with this because we will run out of time.

Lengthy discussion ensued. Mr. Baptiste concurred with Mr. Elkalassi and suggested to put a note on the plan that the house will be razed and be relocated on the lot because the Board cannot condition a Form A plan, but you are going to make that Form A change.

Mr. Fitzpatrick indicated he did not agree and felt that to raze the dwelling on a non-conforming lot and relocate it on a 20,403 sf lot and increase that nonconformity, could become a problem. The applicant offered to put a proposed house on a revised plan. Mr. Baptiste suggested putting a note that #10 Fannies Lane will be razed and relocated

on the lot and a new plan will be submitted as well as a letter from the client and the Board to move forward.

F. Informal Discussin on Solar Panels, c/o Beals and Thomas

Present before the Board: Attorney Richard Serkey
Ms. Minehan

Attorney Serkey gave an overview of the project. He explained this is a proposed solar project to occur in a BDOD and it will be located near the new medical building that is being constructed on Rosebrook Way (under the BDOD provision of the Bylaw). Site Plan approval is needed for a research and development high tech use of this type and the Planning Board is the Site Plan approving authority. Because this is a new use, it would be helpful both entities to get feedback tonight so that they would be ready for December 13th public hearing.

Mr. Baptiste asked Ms. Minehan what the elevation of the solar panels are and if there is an elevation view at all. Ms. Minehan replied that the solar panels themselves begin about 20 inches off the ground surface and they angle up to about 40 inches off the ground surface. That is the maximum height & is fairly low. Mr. Charbonneau suggested if the Board wanted to go see an example of a small scale solar field, the Town of Rochester Planning Board just permitted one related to the New Bedford Water Treatment Facility on the border of Assonet.

Discussion ensued re: the proposal. *NOTE- The tape was inaudible at this point due to background noise.*

It was stated the solar panels make no noise, there is no danger, and the site will be fenced. There will be security signage and the fencing will have a fiber optic sensor so if someone tries to climb it, the sensor will go off. There will be lighting, something like 1000 watts. Mr. Baptiste thanked the representatives for the informal presentation and discussion.

G. Request for Board support – Bike Path Committee – c/o Michael Langford, Chairman

Present before the Board: Mr. Langford, Bike Path Committee Chairman

Mr. Langford asked the Board to write a letter of support. The feasibility study has been finalized. The Committee is at Stage 3 at the present time. The Board of Selectman has drafted a letter of support. There are five stages. Multiple stages of this and each stage has to be discussed and acted upon individually and not as a whole. He stated the Bike Path Committee has been going around to all the committees, boards, and commissions within the Town to let them all know where the areas are being looking at and where things stand at this point in time.

Selectman Cruz indicated that Mr. Langford had appeared before the Board of Selectmen. Mr. Fitzgerald believes Mr. Langford is trying to formalize an area where people could ride bikes. Mr. Langford stated the bike path would be for bikes, walking, running, rollerblading and those kinds of things.

Discussion ensued re: the rail vs. the bike path. The current feasibility study shows that if the Committee cannot use the active rail line, they will come down onto Merchant's Way and use that. The plan is 90%, meaning paid by the State. The Town would be responsible for 10 % of the construction and the path is then turned back over to the Town and the Town would be responsible. The studies on bike paths show bike paths increase property values.

Mr. Baptiste asked about the abandoned part and if it is privately owned. Mr. Langford explained at the very end towards the Marion line there are 2 lots that are somehow privately owned on the original rail line according to MA DOT. They don't have any rail lines like that (that are privately owned). The total cost of the project would be in the vicinity of \$8 million. It is a very ambitious bike path that is approx. 13-14 miles long. The Town would be on the hook for \$800,000.00, but there is already \$200,000.00 in the bank which was obtained through the Community Preservation Committee.

Ms. Davey Morley asked how the path was going to go down Main Street. Mr. Langford explained it would be behind Main Street on Merchant's Way to Sandwich Road then take Indian Neck Road and back up onto Minot Avenue. On the bridge at the Narrows and at the traffic light, you would stay to the left and when you pull up to the light with a bike it would activate like at Wal Mart (East Wareham). There will be a pressure plate on the ground that when you roll over it with a bike, it activates the traffic light.

Discussion ensued re: bump outs, who maintains them, and how you cannot see them at night. Mr. Fitzgerald asked how many people use the bike path. Mr. Langford explained that a bike path is used as an alternate means of transportation and the idea (long range) is to connect all the way from Rhode Island to the Cape Cod Canal. Several alternatives have been looked at and County Road is and has been a challenge.

Mr. Baptiste stated there are 1,200 houses going in off of High Street in Rochester that will dump onto County Road. Wareham has 50 houses and the commute is very, very busy on that road. Mr. Langford hopes the Board will send a letter of support. Mr. Charbonneau asked the Board if they would like him to draft a letter of support at this time. The Board stated yes. Mr. Langford gave his address. He stated the Committee welcomes questions & input.

IV. CONTINUED PUBLIC HEARINGS

A. Site Plan - 237 Sandwich Road – Best Friends Preschool, c/o J.C. Engineering, Inc.

Mr. Baptiste announced there was a request to continue this hearing to December 13, 2010.

V. ANY OTHER BUSINESS/DISCUSSION

A. Next meeting date: Monday, December 13, 2010.

B. Beach Access.

This issue will be discussed at a future meeting. Discussion ensued re: many subdivisions that have had access; the access has disappeared. Mr. Baptiste stated there is one in Lincoln Hill; an ancient way, that goes through the woods all the way to Swifts Beach has been cut & diced up. It all depends what the developer wants to do with it, whether its an ancient way or not. This is why ancient ways and right of ways is a sore subject. When you have lived in this Town all of your life, there were tons of places to go to the beach, access to go quahoging and clamming and now things have changed. The Town has 54/56 miles of coastline and he thinks there is less than a mile that the residents have access to.

C. Sign Committee.

Mr. Charbonneau informed the Board that an email was sent to the Town Administrator and Myles Burke, Director of Inspectional Services re: looking into forming a committee for the sign Bylaws. Mr. Baptiste stated if that happens, it may save somebody a years worth of work. He stated somewhere in the records, probably 15 years ago, there were a couple of sign committees. They looked at all the different towns & what they were doing. He recalls one public hearing where it was real quiet and no one showed up, however, Flo Byron showed up and the following meeting Don Angley showed up and they wanted to postpone the proposed article stating they would work with the committee and then the committee never saw them again. It came up again and it got buried, but there should be some archives and it should save a lot of work. Mr. Charbonneau asked where he could find this information. Mr. Baptiste stated the information should be in the Planning office.

VI. TOWN PLANNER'S REPORT

A. Maple Grove Subdivision.

Mr. Charbonneau sent a letter on Wednesday to Mr. Konish re: Maple Grove subdivision and informed the Board that he spoke to the paving company. The paving company has come as far as they can & the Town has come as far as they can because Mr. Konish does not have the money to pave the road which is why he (Mr. Konish) came to the Board to request release of the funds. The paving company sent a contract to Mr. Charbonneau and John Foster, Town Treasurer, requesting that the Town be listed on the contract, of which, Town Counsel said the Town should not be listed on the contract. Thus, the paving company will not sign the contract without the Town on it and Town

Counsel has advised against doing this. There is not any issue with a joint check, the problem is with the contract. The contract should be with the developer and the paving company, not inclusive of the Town.

Mr. Fitzgerald asked what the value of the contract is. Mr. Charbonneau replied \$30,000.00+. The Town holds a performance bond for \$30,000.00+. Discussion ensued re: Maple Grove subdivision and how to proceed.

B. Walmart Proposal.

The scheduling for a joint meeting for the proposed Walmart in West Wareham is tentatively set for Tuesday, January 4, 2010. Thus far, Mr. Charbonneau has heard back from Ms. Davey Morley and Mr. Fitzgerald and this date works for them. He is assuming it works for others as well. Mr. Slavin concurred.

C. Approval of meeting minutes from previous meetings: September 13, 2010 & November 8, 2010.


MOTION: A motion was made & seconded to approve the meeting minutes of September 13, 2010 & November 8, 2010.

VOTE: Unanimous (4-0-0)

VII. ADJOURNMENT

MOTION: A motion was made & seconded to adjourn the meeting.

VOTE: Unanimous (4-0-0)

Attest: 
Alan Slavin, Clerk
WAREHAM PLANNING BOARD

Date minutes approved: 1-10-11

Date copy sent to Town Clerk: 1/11/11 