

PLANNING BOARD MINUTES

January 14, 2009

Board members present:

Art Weber, Chairman Ron Wolanski, Town Planner

Jan Eckhart, Vice Chairman Frank Holbrook, Assistant Town Solicitor

Audrey Rearick Russell Jackson, Assistant Town Solicitor

Frank Fogue

Betty Jane Owen

Richard Adams

Members absent:

Gladys Lavine

The meeting was called to order at 6:30 pm.

Minutes:

Motion by Ms. Rearick, seconded by Ms. Owen, to approve the minutes of the December 10, 2008 regular meeting. Vote: 6-0-0.

1. Correspondence

Motion by Mr. Adams, seconded by Mr. Eckhart, to except the following correspondence:

A. Memo from Ronald M. Wolanski, Chairman, Technical Review Committee, dated November 26, 2008, re: Guvant Patel (Econo

Lodge), Proposed construction of outdoor swimming pool and patio, 1359 West Main Rd., Plat 114, Lot 4.

B. Copy of Planning Board letter to the editor of the Providence Journal, dated November 12, 2008, re: November 9, 2008 editorial: “Crashing into Newport”

C. Transmittal of documents from Richard Neidich & Sam Howell, dated November 12, 2008, re: Gallipeau Proposed Saltwood Farm 14-lot Subdivision.

D. Letter from Peter Gallipeau, dated December 1, 2008, re: Saltwood Farm Master Plan – Response to Mr. Neidich’s comments.

E. Letter from Peter Gallipeau, dated December 1, 2008, re: Saltwood Farm Master Plan – Response to Mr. Brown’s comments.

F. Letter from Peter Gallipeau, dated December 1, 2008, re: Saltwood Farm Master Plan – View impact of development as constituting a “nuisance”

G. Letter from Peter Gallipeau, dated December 1, 2008, re: Saltwood Farm Master Plan – Use of Conventional R-40 design

H. Petition submitted by Peter Gallipeau, re: Saltwood Farm Master Plan.

I. Memo from DPW Director, dated November 17, 2008, re: Peter Gallipeau, Saltwood Farm Subdivision Master Plan

Vote: 6-0-0

2. Old Business

A. Subdivisions.

1. Bancroft Partners, Administrative Subdivision Plan, Tuckerman Ave. Plat 122, Lots 123, 124, & 127

Attorney Robert Silva represented the applicant. He stated that his client is seeking conditional approval of the plan, subject to necessary zoning relief. Mr. Silva described the proposal, which includes the alteration of three existing lots. Relief granted by the Zoning Board of Review is needed for alteration of substandard frontage on the undeveloped lot.

Mr. Silva stated that the Planning Board had previously approved a similar plan.

Mr. Weber opened the floor to discussion.

Attorney Joseph Hook stated that he, on behalf of attorney Christopher Behan, was representing an abutter to the subject property. He stated that his client has several concerns regarding the proposal. He referenced the existing multi-family dwelling located on one of the subject lots. A special use permit is needed to allow for an alteration to the non-conforming use. He stated that the resulting relocation of the building envelope on the undeveloped lot would result in increased density in the area. He stated that the plan results in a new zoning nonconformity since the relocated property line would be within ten feet of an existing parking area. He requested that the plan not be approved until necessary relief is granted by the Zoning Board of Review.

Mr. Weber stated the Planning Board could only grant conditional approval, and that the applicant would be required to seek relief from the Zoning Board of Review prior to the Planning Board granting final approval.

Mr. Holbrook confirmed that this would be the appropriate process.

Mr. Silva presented a letter to the Board from Mr. Bagwill, an owner of one of the subject lots, indicating his support for the proposal.

Motion by Ms. Owen, seconded by Mr. Forgue, to grant conditional approval of the subdivision plan, subject to the applicant being granted any necessary relief by the Zoning Board of Review prior to final subdivision plan approval. Vote: 6-0-0.

2. Public Informational Meeting (continued from December 10, 2008) - Peter Gallipeau (Saltwood Farm), Proposed 14-lot Subdivision, Plat 126, Lots 4, 217, 218, 219, Master Plan Submission

Assistant Town Solicitor Frank Holbrook recused himself from the discussion. Mr. Jackson served as solicitor on this matter.

Mr. Weber stated the Board has heard extensive testimony regarding this matter during the previous meetings. He requested that those present wishing to speak on the matter refrain from repeating prior testimony.

The floor was opened to discussion.

Attorney Joseph Palumbo stated that he represents individuals concerned with the proposal. He referenced a letter he sent to Mr. Wolanski which outlines concerns related to the Town's interpretation of the definition of developable land area as contained in the Middletown Zoning Ordinance.

Board members indicated that they had received copies of the letter.

Mr. Palumbo stated that the Town's interpretation is in conflict with the definition of wetland as contained in state statute. State law includes areas within 50 feet of a pond, bog or marsh in the definition of a wetland. There is no discussion of a "setback" in the state law.

The town definition of developable land area requires the exclusion of wetlands, excepted that the “setback” area is not excluded. The fact the Town’s definition references the state wetland definition, which does not include discussion of a setback, indicates the Town’s practice of including the 50 foot area as buildable, even though by state definition it is considered wetland, is inconsistent with the law.

Mr. Palumbo stated that this is a question that must be answered at the master plan stage of review as lot yield determined now will carry forward to the next stage of review.

Mr. Weber asked Mr. Palumbo why the Town’s interpretation of the definition of developable land area had not been raised as an issue in the past.

Mr. Palumbo stated that he did not know why it had not been addressed before.

Mr. Adams asked what the impact on the lot yield for the development would be if the land area within 50 feet of the flagged wetland were excluded from developable land area.

Mr. Wolanski stated he had not completed such a calculation, but estimated that the yield might be reduced by one or two lots.

Mr. Palumbo stated that he also questions the applicant’s contention that he owns the area of land indicated on the plan as a 40 foot right-of-way known as Bailey Ave. located on the northerly side of the proposed development. Research to determine ownership is underway.

Attorney David Martland, representing the applicant, stated that the Town’s interpretation of the definition of developable land area has

been consistently applied for several years. To change the interpretation now would be unfair to his client. The question of the ownership of the Bailey Ave. right-of-way is a moot issue since the application includes a yield plan which demonstrates the ability to develop fourteen lots.

Mr. Weber asked Mr. Martland about the concern that the town's definition of buildable land area might be inconsistent with the state wetlands law.

Mr. Martland stated that towns define buildable land area differently. There was discussion by Board members that the initial lot yield approved at the master plan stage is not the final yield determination, which is determined at final plan stage following engineering work and environmental permitting.

Mr. Palumbo reiterated his concern over the Town's interpretation of the definition of buildable land area, and the use of the term "setback" in the definition.

Mr. Jackson stated that he had reviewed the zoning definition and the wetland statute. He stated that the wetland statute, including the language regarding the 50 foot area abutting ponds, bogs, and ponds, was adopted prior to the Town's adoption of the definition of buildable land area. Given that, it appears that the intent of the town in adopting its definition, and its use of the term "setback", was to include the 50 foot area as developable land area for the purposes of calculating density. He noted that some towns, such as Newport, do not have a definition for buildable land area, and therefore an entire parcel, including wetlands could be used to calculate density. By

comparison, Middletown's practice of excluding wetlands minus the 50 foot area is more restrictive.

Mr. Jackson advised the Board that it should apply the town regulations, as they exist today, to this application.

The applicant, Mr. Gallipeau, stated that the statement made by Mr. Palumbo in his letter to the Planning Director, indicating that the plan is "fatally flawed", is incorrect. Final lot yield will be determined at a later stage of review.

Motion by Mr. Adams, seconded by Ms. Rearick, to grant the following waivers from the subdivision regulations:

1. Submission requirements, Site Context Map: The map must include land within one mile of the site (scale 1" = 400' or 1"=500') The map must identify drinking water supply watersheds, surface waters, wetlands and conservation & recreation lands in the area shown.
2. Submission requirements: The plans should identify views and access to the open space from the proposed lots.
3. Section 603 - Proposed right-of-way width of 40 ft. for Bailey Ave and for the proposed new road, where 50 feet is required.
4. Section 603 – Proposed right-of-way radii of 8 and 9 feet at intersection where 25ft is required.
5. Section 603 – Proposed minimum centerline radius with horizontal curve of 34 ft. where 150 ft. is required.
6. Section 510 - Proposal to not include sidewalks as part of the new roadways.
7. Section 603 - Section Proposed 20' wide roadway (including Cape Cod berms) where 26' is required.

Vote: 6-0-0

Motion by Ms. Owen, seconded by Ms. Rearick, to apply the following conditions of approval to the proposal:

- 1. Development of lots within a Watershed Protection District, Zone 1 requires a special use permit. The applicant is required to secure the required special use permit prior to Preliminary Plan approval.**
- 2. Basic Maximum Number of Dwelling Units: The applicant has provided a yield plan to support the initial request for 14 lots within the development. The final number of development lots will be determined by the Planning Board at the final plan approval stage.**
- 3. As part of the preliminary plan submission, the applicant must provide the development impact statement and review fee required by section 310 of the Zoning Ordinance. Third-party review of the plans and impact statement will be required.**

Vote: 6-0-0

Motion by Mr. Eckhart, seconded by Ms. Rearick, to grant master plan approval subject to the approved waivers and conditions, and the following findings:

- 1. The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies.**
- 2. The proposed development is in compliance with the standards and provisions of the Town zoning ordinance.**
- 3. There will be no significant negative environmental impacts from the proposed development.**
- 4. The subdivision will not create lots where physical constraints**

would make building on the lots impracticable.

5. All subdivision lots shall have adequate and permanent physical access to a public street.

6. The initial basic maximum number of lots is fourteen (14) as demonstrated by the yield plan submitted with the application package.

Vote: 6-0-0.

3. Peter Gallipeau, Request for conceptual review of proposed minor subdivision of land fronting on Paradise Ave. and Cross Country Lane. Plat 120, Lot 97.

Assistant Town Solicitor Frank Holbrook recused himself from the discussion. Mr. Jackson served as solicitor on this matter.

Mr. Weber asked if there had been any further discussion based on the Planning Board's input at the previous meeting. The Board had indicated that it might support the concept if it includes additional open space protection.

Attorney Robert M. Silva, representing an abutting property owner, McGeough, stated that his client has agreed to acquire a portion of lot 97 from Mr. Gallipeau, and there is a private agreement that that area would not be developed. Mr. Silva stated that his client is not interested in applying additional restrictions to his property.

Mr. Weber stated that, as previously discussed, the proposal as a one-lot subdivision with a small area of open space resulting is not consistent with the conservation subdivision concept.

Mr. Adams and Mr. Forgue agreed that the proposal as presented is not consistent with the intent of conservation subdivision.

Mr. Eckhart asked Mr. Gallipeau how much combined land would be protected by the private agreement and the open space set-aside in the proposed plan.

Mr. Gallipeau stated that the total would be approximately 58,000 square feet.

Mr. Eckhart stated that the proposal is not consistent with the intent of conservation subdivision development.

Mr. Weber stated that the a primary concern of the property owner, which is to provide a building envelope for lot 97 closer to Paradise Ave., is a matter that should be brought to the Zoning Board of Review for consideration.

Mr. Gallipeau asked if the Board would provide support for such a request.

Mr. Weber indicated that the Board might consider supporting the request if the Zoning Board of Review requests a recommendation.

Mr. Silva and Mr. Gallipeau thanked the Board for its consideration.

B. Additional Items.

1. Proposed procedure for drafting and approving Planning Board decisions.

Mr. Weber asked Mr. Holbrook if had review the matter.

Mr. Holbrook stated that he sees no need to change the Board's current practice. There have been no recent incidents or concerns regarding the drafting and signature of decisions.

By consensus of the Board to the matter was tabled.

2. Comprehensive Community Plan 5-year update –Discuss meeting schedule.

Mr. Wolanski stated that Town Council has agreed to the establishment of a comprehensive plan update committee. After receiving the nominations from various town committees, the Council requested that members of the general public be invited to serve as well. Once the committee is established, the first meeting will be scheduled.

3. Discuss status of draft inclusionary housing ordinance

Mr. Wolanski stated that he has yet incorporate recommended revisions into the revised draft.

By consensus the matter was continued to the February 11, 2009 Planning Board meeting.

4. Request of the Town Council for additional Planning Board review and recommendation on proposed zoning ordinance amendment regarding wind energy conversion facilities in light of Town Solicitor comments

5. Request of the Town Council for additional Planning Board review and recommendation on proposed zoning ordinance amendment regarding senior independent living facilities in light of Town Solicitor comments.

It was determined by consensus of the Board that the proposed zoning ordinance amendment items referred back to the Planning Board by the Town Council relating to wind turbine regulation and senior independent living will be discussed at a special Planning Board meeting scheduled for January 28th at 6:30pm.

6. Discuss potential amendments to the Middletown Zoning Ordinance, Sections 602 & 603 regarding allowed uses and

dimensional requirements on the Limited Business (LB) zoning district.

Mr. Weber suggested that a workshop meeting be scheduled to discuss options to address the proposal submitted by Mr. Shers.

Mr. Wolanski was asked to contact Mr. Shers and his business partner, Mr. Clausen, to schedule a meeting.

**Motion by Mr. Adams, seconded by Mr. Eckhart, to adjourn. Vote:
6-0-0**

The meeting adjourned at 8:15pm