

PRESENT: Patricia Hacker, Chairman
David Stringfellow, Vice Chairman
Margaret Andrzejewski
David Bernas
Richard Hody
Jeffrey Mendola

EXCUSED: J. David Early
Michael Pohl

ALSO: Dennis Kramer Code Enforcement Officer
PRESENT: Frank Lisowski Deputy Code Enforcement Officer
Kelly Vacco Town Attorney
Karl Simmeth Councilman
Robert S. Chelus Interested Town citizen
Amanda Williams High School Government project
Student (couldn't read writing) High School Government project
Ronald J. Yormick Deanna Drive property

Chairman Hacker called the meeting to order at 7:30 PM.

MINUTES

Mrs. Hacker asked if there were any corrections or additions to the minutes March 9, 2004.

Mr. Hody: there was no mention of the curb radius at 7170 Boston State Road.

Secretary Faulring: At the bottom of page 4, beginning with Mr. Brox's statement, does that cover what you mean?

Mr. Hody: Yes, that's sufficient.

Mr. Hody: I also made mention of consideration for a right hand turn lane, southbound. I know that these plans have to go to the County for approval, and maybe we can get into traffic issues later, but I did mention about a right turn lane.

Mr. Hody: On page 7, under distribution of Town Board referrals – 'Chairman Hacker: Please not,' should be 'please note.'

With that correction, Mrs. Andrzejewski made a motion to accept the minutes, seconded by Mr. Stringfellow. All in favor.

CORRESPONDENCE

Chairman Hacker reported the following correspondence:

- Notice received for the 11th Annual Southern Tier Government Conference to be held at Houghton College on May 13, 2004. Mrs. Hacker stated that anyone attending could submit a voucher for the registration fee.
- Town Board minutes of March 3, 2004
- Other correspondence to be read at point in agenda.

LIAISON – BRIEN HOPKINS

Mrs. Hacker: Councilman Hopkins called to say he had another Town commitment this evening. Councilman Simmeth, do you have anything for us?

Mr. Simmeth: No, but I'm here for any questions.

7170 BOSTON STATE ROAD – CVS PHARMACY

Mrs. Hacker summarized several telephone discussions that she has had with James Ryan, from CVS:

- Mr. Ryan claims that he has written, confirmed proof that the paperwork was at the Town Hall on Friday, at 10:30 AM, in time for the Planning Board mailing
- He expected an approval this evening, and as far as he's concerned this should be over and done with.

Mrs. Hacker: I explained to him that the signage is not complete, there were no pictures of the awnings, there was nothing returned from the engineers; and Mr. Brox wanted information on the curb cut and the landscaping. I told Mr. Ryan that there would be no decision made at tonight's meeting.

Mrs. Hacker: The elevations show the front, the right, the rear elevation and a another right elevation. I think that should be the left elevation. This is not sufficient because we need the sign package.

7170 Boston State Road – CVS con't.

Mr. Bernas: Is the address correct at 7170? I'm at 7174 and the numbers can't go down.

Mr. Hody: The drawing shows 7182.

The sign package was reviewed to determine the 3 allowable signs:

Sign #1 – right side, CVS Pharmacy

Sign #2 – front side, CVS Pharmacy

Sign #3 – large sign out front

Mr. Mendola: the problem is that there is a pharmacy sign, a smaller drive-thru pharmacy sign on the canopy for the pharmacy and then a very small one on the exit side of the pharmacy, which gives him three instead of two, neither of which meet the requirements that the Zoning Board of Appeals can approve; they can only approve a smaller version of what's on the front; so he could put drive-thru pharmacy on the front side elevation, if that was one of the three approved signs, and these other two on the drive-thru are smaller versions of that, they would be okay. But that only leaves him with two more signs and he has three.

Mr. Stringfellow: does he make the distinction between signs that are essentially advertising and signs that are directional? There's no limit on directional signs.

Mr. Mendola: The bank has enter/exit as directional. CVS red, drive thru slash lower case pharmacy in the exact font, the sign that's on the front of the building is not a directional.

Mr. Stringfellow: I agree with that.

Mrs. Hacker: So the CVS/pharmacy is the #2 sign? Are you saying the drive-thru pharmacy would be the one he would be asking a variance on and then only go enter/exit?

Mr. Mendola: He's not going to ask, because technically no combination of these signs meet the criteria for the Zoning Board of Appeals to grant a variance for a sign that is a smaller version of the main sign on the building.

Mrs. Vacco: The two sign variance isn't a 'two sign whatever you want.' And they have been told that on several occasions.

Mrs. Hacker: So there is still a problem with the signs, and it is clearly stated in Town Code.

Mrs. Vacco: Town Code section is 95-16, paragraph 2, subsection b.

Mrs. Hacker read Mr. Brox's letter of March 23, 2004

Chairman Hacker: Anything else beside the drain issue, the 30-inch pipe issue, the signage? They are short a copy for distribution, and will have to submit 21 Final Site Plans. Awnings were supposed to be addressed in the package received tonight. Lighting is indicated on the front elevation only, nothing on the sides. There are 4 shown with no information in regards to the lights as far as the size, the amount of wattage, and whether or not they are on a timer, which we'll need. They appear to shine directly down.

Mrs. Hacker: Anything else?

Mr. Hody: Has the traffic issue been addressed? Basically, is a right turn lane required? Did they do a SEQR?

Mrs. Hacker: Yes, they did.

Mr. Hody: So that must have addressed the traffic conditions out there, and that should address the traffic concern. If the engineers are reviewing, make sure that they take that into account.

Mr. Bernas: What is looked for in this type of review?

Mr. Hody: To see if a drop lane is justified; they should address any accidents in that area. There's a short drop lane there now for a right turn on to Zimmerman.

Mr. Bernas: This project will cause considerable more congestion during the morning and evening rush hour time.

Mrs. Hacker: I believe Mr. Brox brought this up and stated that the Zimmerman Road exit would alleviate a lot of questions of that concern.

Mr. Bernas: Drivers don't observe enter/exit signs. An example is at the bank. There are only to be turns from the State Road for northbound traffic, and exits onto Boston State Road to go north. We know turns are being made in and out, from all, and to all directions.

Mr. Hody: The County will have to review the traffic situation; there may be a need for a center lane. Also the radius for truck turns, both southbound and northbound, from Boston State Road.

Mr. Bernas: I work in the very proximity of this project. There is a lot of slamming on brakes and screeching. Last week there was a fender bender when someone was making a left hand turn into the park and ride. It's a problem – pulling out of Brunner's, the mobile station, out of our retail area.

7170 Boston State Road – CVS con't.

Mrs. Hacker: How can we regulate this?

Mrs. Vacco: The County probably has 95% of the authority. I can't imagine that they are going to allow them to do what is almost physically impossible or what's going to create a situation that will expose them to liabilities, if they look at this let it go through knowing that it adequately did not provide....

Mr. Simmeth: Boston State Road isn't a county road, that's a State Road to the light and then the County owns from there.

Mrs. Vacco: So that will have to be a State permit, and that's even more difficult.

Mrs. Hacker: If there are no further comments, is there a motion to table discussion until the next meeting.

Mr. Stringfellow: So moved, seconded by Mr. Hody. All in favor.

BOSTON HILLS LLC – GARY ECKIS

Mrs. Hacker read the following correspondence:

- Letter dated March 17, 2004 from Highway Superintendent Kreitzbender

Mrs. Hacker noted a letter dated March 17, 2003 was received from Gary Eckis.

Mrs. Hacker: In the letter from Wayne Kreitzbender it's says that the agreement with Gary Eckis was that the driveway was supposed to go above the turnaround and enter onto Deer Run, 50 foot before it. Dennis, who owns this and has it been placed illegally? Do we need to have them move that? Whose driveway is coming off the turnaround?

Mr. Kramer: The property in the back.

Mrs. Vacco: Ted, I don't know his last name.

Mrs. Hacker: Then we have, according to Mr. Kreitzbender's letter, a driveway there that is illegal, and it needs to be moved. But, because the way the property line is, there is no way that driveway can be installed 50 feet away from the turnaround, is that correct?

Mr. Stringfellow outlined how the frontage was met on the 't' turnaround.

Mr. Kramer: That driveway has been there for at least two years, maybe even three.

Mrs. Vacco: Actually, I thought Wayne approved that.

Mrs. Hacker: So as a Board are we only to address the new lot that is at the end, and state that they cannot locate it where they want too, that it has to be at least 50 feet beyond....

Mrs. Vacco: I want clarification so that I/we can understand what subdivision rights are saying.

Discussion followed as to what is considered as the 't' turnaround – where does the 't' turnaround start and where does the 't' turnaround end.

Mr. Mendola: Actually the shaped 't' doesn't even match the 't' turnaround specification that's in the Code book.

Mrs. Vacco: But that is the one that is approved.

Mr. Mendola: But, they approved the whole 't'.

Mrs. Vacco: In the letter he stated that he would finish it when the weather improves.

Mrs. Hacker: We need a clarification from Wayne.

Discussion followed regarding the conditions of the Highway Superintendent and the Planning Board, and the lots that are then rendered non-buildable lots.

Mr. Hody: What would make it buildable, a cul-de-sac?

Mrs. Hacker: Correct.

Mrs. Vacco: It has the highway frontage, but if you can't put a driveway off it, then it's not buildable.

Suggestions that were made to make these lots buildable:

- An easement across the 20 acre parcel
- Extending the road and putting in another 't'

Mr. Simmeth: You might consider the option that the Town put in the cul-de-sac and have Mr. Eckis reimburse the Town. Mr. Kreitzbender indicated to me that it isn't that cost prohibitive. The 't' is already there, the base is pretty much in there, all you'd have to do is run a cul-de-sac and add a little bit here and there.

Boston Hills LLC – Gary Eckis

Discussion followed about how these parcels, and property lines, came about.

Mr. Kramer: Originally there were 26 parcels that were approved as a subdivision and the dead end stopped at that 't'. Then the owner, using his imagination, decided if he broke things up, he could parcel it out by using the existing road. He created a frontage for that 57-acre piece off of Rice Road.

Mrs. Hacker: If there are no more questions, is there a motion to table.

Mrs. Vacco: I would like to have clarification of the 't' –

- Does he mean just the small part of it
- Does he mean the whole thing
- Where does the 't' begin, where does the 't' end

Mr. Simmeth: I think that it should be brought to Gary's (Eckis) attention what his options would be. That the Town would be responsible....

Mrs. Hacker: I don't think we give Gary options until we have ours. Until we know how far we're going to have to place this.

Mr. Hody: If he's talking about paving, isn't that something that you'd want to adjust before he paved, so....

Mrs. Hacker: Absolutely, and if we table it, that will so indicate that we still have questions.

Mrs. Vacco: The letter went out saying that you would address the issue of the modification of the subdivision, once he's finished paving. And I think what Rich is saying that Gary might start paving, and then you might ask him to do the cul-de-sac, and wouldn't it be...

Mrs. Hacker: So, is there a motion to send Gary Eckis a letter stating:

- that we have issues with the beginning and end situation to the 't' turnaround
- Discontinue paving until it is further addressed

Do we include our decision on the adjoining of the Tuttle properties, or can we....

Mrs. Vacco: He has submitted an application to the Planning Board for the modification of the subdivision. The Board then responded back to him saying that 'we are not going to address your modification request until you finish paving the 't' turnaround as was originally indicated in the final map of the approved subdivision.' You're now stating that maybe there is a compromise where we could suggest to him that the Town put in the cul-de-sac, and he reimburse the Town. So it doesn't make sense to pave until that suggestion is made to Mr. Eckis.

Mr. Hody: Mr. Simmeth also suggested that he should address the issue of how the driveways would all be accessed off the 't', because it doesn't appear to us that it can be done. You might want to include the cost that Mr. Kreitzbender has indicated.

Mrs. Vacco: I think there are enough issues, you don't look like you're being obstructionists at this point. Put a letter out to him stating that there has been a request for clarification from the Highway Superintendent on the placement of driveways and what his definition of the 't' turnaround is and where the 50 foot exemption falls into place.

Mrs. Hacker: I will make that a motion, that a letter is sent to Mr. Eckis requesting what Mrs. Vacco just stated.

Mr. Hody: I second it.

Mrs. Vacco: And I think at the next meeting, once we've gotten these answers, then you're going to have to move on his request, whether it's a yes or no. Maybe you'll have enough information that you could actually call him in and make the proposal. We can get a ballpark figure from the Highway Superintendent, and would it be something that he (Eckis) would entertain.

Mrs. Hacker called for a vote on the motion. All were in favor.

Mrs. Vacco offered to draft the letter to be sent to Mr. Eckis.

5785 HERMAN HILL ROAD – REQUEST FOR SPECIAL USE PERMIT

Mr. Stringfellow: We reviewed this before, why are we reviewing it again.

Mr. Lisowski: The first request was for rezoning, and the Town Board didn't rezone it, so now they are back asking the Town Board for a Special Use Permit, and in turn referred back to the Planning Board.

5785 Herman Hill Road, con't.

Mrs. Hacker: I was not aware that they are violating code.

Mr. Lisowski: Yes and have been cited, for about a year.

Mrs. Hacker: We returned a recommendation to the Town Board with stipulations, but the Town Board denied it. So at that point there should have been a Cease and Desist, but I don't think that ever happened.

Mr. Lisowski: They went back to Court and the judge gave them extra time, with the fine being frozen on that date. That gave them extra time to submit for a Special Use Permit.

Mrs. Hacker: And this is the first we're seeing it?

Mr. Lisowski: The owner of the property has been dragging the whole process out. Judge Tills told her 'I hope the next time you're here, this is resolved, one way or another.'

Mrs. Hacker: The Judge gave extra time and froze the fines.

Mr. Lisowski: The prosecutor recommended that the fine be frozen as it drags, this could be fined up to \$250.00 a week, so they set kind of a limit on it.

Mrs. Vacco: As part of the Judge's order, did they say to cease and desist the activity?

Mr. Lisowski: No, they did not. I issued a Cease and Desist, I issued a summons...

Mrs. Vacco: There was no order to stop it until such time the Special Use Permit was granted?

Mr. Lisowski: No, the judge hasn't because Miss Bauemler keeps pleading her case saying that I'm going to be rezoned. Everyone is just dragging their feet. But this time Judge Tills did say, 'this is it, this is the last straw.' She has no other alternative. If this is denied then she has to Cease and Desist, and when she appears in court the fines again will be picked up on a weekly basis. The prosecutor and Miss Bauemler agreed that they would freeze this two month period for her to apply for this Special Use Permit, without any fines. After this the fines can be picked up.

Mrs. Vacco: I would like Dennis' take on Special Use Permits, what circumstances in the past have you seen special use permits issued.

Mr. Kramer: I don't think there is any justification for a Special Use Permit for that particular situation. There are only about three Special Use Permits issued: one for the tower on Keller Road; one for a temporary tent type cover on May Drive; and there used to be one across the street for an antique shop, I don't know if he's even in business anymore. Those are the only three that I'm aware of. If you look through the Code for the definition for the provision of Special Uses, that they even qualify, that's my interpretation of it.

Mrs. Hacker: The tower on Keller Road, we did an on-site visit. The tower is way out back and it's a hobby type situation. None of the neighbors objected.

Mr. Kramer: That is one of the things that Special Use address, radio and TV towers or Ham Radio Towers. The Special Use on May Drive is an aluminum and canvas structure and has been there probably six years.

Mr. Mendola: And that's only because he has one too many accessory buildings. This one is looking for a Special Permit to basically be doing what she shouldn't be doing. It's commercial use on a property with a residence.

Mrs. Hacker: And the neighbors are not happy with this going on there.

Mrs. Vacco: If you want to check Section 123-173 that is the Special Use procedure. The definition speaks vaguely because it is not intended to be used with any sort of frequency. It has to be basically something that doesn't fit, something that you can't get a variance for because it doesn't fit into any of the situations where a variance would apply, so it becomes a Special Use.

Mrs. Hacker: The agenda says discussion only, so please read Section 123-173 and review for next meeting.

Mr. Lisowski: Could I just add, that in 1997 the Code Book was amended. You're not allowed to have a mixed use. There is a home occupation with the caning business, it's her principle residence, and now she's applying for a Special Use Permit for a C-1 Zoning to operate a commercial business that is definitely restricted.

Mr. Kramer: If your time allows, I would ask that everyone drive by there and take a look at what's already there.

Mr. Lisowski: If they are really interested in running that towing business, the property next door is for sale.

Mr. Bernas: And if they are not in a position to do that, there are other available nearby properties with plenty of parking.

Mr. Stringfellow: I don't see any reason to delay this for two more weeks. It's pretty clear that what they are doing is a violation of the zoning; there are no grounds for a Special Use Permit. I make a motion that we send a recommendation to the Town Board that this application be denied for the following reasons: most importantly no mixed use; number of Special Permits already in Town are very limited and nothing similar to this; and they don't meet the grounds for a Special Use Permit, as per Code 123-173.

Mr. Mendola: I'll second that motion.

5785 Herman Hill Road, con't

Mrs. Hacker: I don't want anyone on this Board to be rushed. Some of us have been through this before, but not the new members.

Mr. Lisowski: Maybe she should be allowed to state her case.

Mrs. Vacco: It's got to go back to the Town Board, so she can do so at that time.

Mrs. Hacker: On the motion, all in favor. All were in favor.

CODE ENFORCEMENT OFFICER KRAMER

Mr. Kramer: Not anything else. Did Mr. Charlap and Mr. Barrett receive their letters?

Mrs. Vacco: Yes.

Mr. Kramer: The only other thing is that the CVS people keep calling me...

NON AGENDA ITEMS

Mrs. Hacker: I have received a copy of the Planning Board minutes from 1994 to 1998 of the Hickory Meadows project. I have gone through them and will be passing them around to each of you for review.

Mrs. Hacker summarized her notes and asked that others please make notes for further review before going into the Darling Subdivision.

Mrs. Vacco: I have received a certified letter from the Hickory Meadow residents requesting that streetlights be installed in the subdivision. They are complaining to the Town Board, that it is very dangerous, that is very dark and that either one of two actions need to occur: if the decision is that no lights are to be installed, that the residents have the light assessment removed from their taxes; to make that worse there is a light assessment for a light district that they have been paying and make that retroactive; or, the lights need to be installed in order to provide sufficient lighting for safety, aesthetic, engineered like other neighborhoods.

Mrs. Hacker: Is there anything else?

Mr. Simmeth: Our hands are pretty much tied; I guess we learn from past mistakes. The way I'm approaching this matter now is, Denny Kramer is going to find the subdivision map with all the underground utilities on it. I'm working with a Mr. Spoth, he's the subdivision light guy from Angola, and he'll look to see where he can place lights in the subdivision.

Mr. Kramer: Mr. Pohl has the plans right now, so that he could do some work with them.

Mr. Simmeth: We're just going to put lights in the whole subdivision, which should have been done from the start. We'll do the whole subdivision at once, instead of one here, one there.

Mrs. Hacker: Does the new law so note how it should be done? So when we get to the Darling Subdivision?

Mrs. Vacco: The old law said how it should be done. It's a 'shall' it's not a 'may' or a 'might' or a 'could,' it's a 'shall' which means 'must.'

Mrs. Hacker: So this Board doesn't have any recourse to the wrong information they were given?

Mrs. Vacco: It was approved. If there are lights on the engineer's drawing, at the intersections, that were never put in, I think technically you could go back to the developer. It's the same way you're going back to Mr. Eckis, saying we approved this in this manner, and you haven't done it. You could do that with Hickory Meadows, but only to the extent as it is shown on the approved map.

Mrs. Hacker: That would be the September 8, 1998 paperwork.

Mr. Simmeth: The way I'd like this Board to get involved is to make a selection of a street light design, and then have the same street lights in all the subdivisions in Town.

Chairman Hacker: Is there anything else?

Mr. Stringfellow made a motion to adjourn at 8:30 PM., seconded by Mr. Hody. All in favor.

Respectfully submitted,

Patricia J. Hacker
Patricia J. Hacker
Chairman

PJH:tjf