

## Planning Board Minutes November 9, 2004

BOSTON PLANNING BOARD NOVEMBER 9, 2004

PRESENT: Patricia Hacker, Chairman

David Stringfellow, Vice Chairman

Michael Pohl, Secretary

Margaret Andrzejewski

David Bernas

Richard Hody

Jeffrey Mendola

EXCUSED: J. David Early

ALSO Kelly Vacco Town Attorney

PRESENT: Dennis Kramer Code Enforcement Officer

Brien Hopkins Councilman ? Town Board Liaison

Richard Brox Planning Consultant

Jacob Connor Government A.P. Student ? Orchard Park High School

Joseph DeMarco Applicant ? 5647 Herman Hill Road

Dana Darling Applicant ? proposed subdivision

Lori Mulhisen Town resident ? Darling proposed subdivision

Chairman Hacker called the meeting to order at 7:31 P.M.

Mrs. Hacker introduced Jacob Connor to those in attendance.

#### MINUTES

Mrs. Hacker asked if there were any corrections or additions to the minutes of October 26, 2004. Being none Mr. Stringfellow made a motion to accept the minutes. Seconded by Mr. Hody. All were in favor.

#### CORRESPONDENCE

Mr. Pohl reported the following correspondence:

- Notice of Decision from the CVS sign variance request on July 1, 2004
- Letter dated October 27, 2004 from the Planning Board to the Town Board regarding the Brox contract renewal
- Town Teleconference on November 16, 2004 ? ?Turn Your Downtown Around: Tips, Tools & Money?
- Town Board minutes of October 20, 2004

#### LIAISON ? COUNCILMAN HOPKINS

Mr. Hopkins reported:

- On the sound issues at Couzin?s Restaurant

Mrs. Hacker: Is there any legal issue with the windows being boarded up?

Mr. Hopkins: No, there are doors on either side of the back room and a front exit.

- Flu Shots will be given to ?seniors? over 65, please call the Town Clerk?s office to make an appointment, not necessarily for this group, but please tell others that might not be aware of the program

#### 5647 HERMAN HILL ROAD

Mr. Pohl reported the following correspondence:

- Letter dated October 29, 2004 to Richard Brox requesting his review
- Letter dated October 29, 2004 to Foit-Albert Assoc. requesting their review
- Letter dated November 8, 2004 from Richard Brox with his reply
- Letter dated November 9, 2004 from Foit-Albert with their reply

Mr. Brox read his letter in its entirety, and stated that the Town engineer addressed the drainage issue.

Mrs. Hacker: There is a parking variance issue, there is a lighting issue.

Mrs. Vacco: What is this building going to be used for?

Mr. DeMarco: Storage for construction equipment.

Mrs. Vacco read Town Code Section 123-103 I, and stated that 4 parking spaces would be sufficient.

Mr. Brox: Your application says General Construction, which is not an enumerated use.

Mrs. Vacco Perhaps you could amend your application to reflect that the building will be used for heavy equipment storage.

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Mr. Kramer: I calculated the parking for him.

Mr. Brox: Why?

Mr. Kramer: Because I try to be helpful.

Mr. Pohl: We should have a letter of intent.

Mr. Brox: I do agree with the Town Attorney that if this is a storage building that the parking is correct. However, I would suggest that the parking spaces be moved to the front of the property and the remainder be a grassy area, and that the parking be screened in some way.

A lengthy discussion followed. The following is a list of items that need to be addressed:

- Letter of intent
- Application amended to indicate use of building
- Landscaping
- Drainage
- o Mr. Pohl read the Foit-Albert letter dated November 9, 2004 specifically dealing with drainage
- Set back lines

Discussion followed regarding the drainage and it was decided that a letter from the adjoining property owner be included.

Discussion followed concerning parking. This was added to the list of items to be addressed.

Mr. Pohl went through Code Section 97.

Discussion followed regarding contingency approval on landscaping.

Mr. Brox: You can give contingent approval on landscaping. Generally at this time of year, when you're not going to be able to install grass and shrubbery and trees; it is not unusual for the town to require a performance bond to guarantee that it is going to go in, in the spring; in the amount of the value of the landscaping, probably two or three thousand dollars. You can have a certified check, a performance bond some other kind of assurance that it is going to happen and then the building certificate of zoning compliance and the Certificate of Occupancy are not issued until after it is done. In the meantime he can use the building with a temporary certificate, but not a permanent.

Discussion followed.

Mrs. Hacker asked that this be available for review before the meeting on November 23, 2004.

Mr. Mendola: Light placement on the building should be indicated.

Mr. DeMarco: I gave you all the changes that you asked for at the last meeting. The elevation of the front building, the elevation of the existing building; I got a survey; I got a plot plan; I got drainage. I don't know what else to do. I am baffled.

Mr. Stringfellow: You don't show any sewer and water connections to the new building?

Mr. DeMarco: It's only going to be used for storage. I'm ready to go ? the other buildings have been removed, the stone is done, it's costing me a lot of money to keep prolonging this thing.

Mr. Pohl: You need to follow Chapter 97.

Mr. DeMarco: This is an existing building with an addition. A lot of that doesn't apply to this. I'm just trying to better the place and get my equipment inside. When I bring this back what's going to change then?

Mrs. Hacker: This is the Code. The Code is not going to change.

Discussion between Mr. DeMarco and the Board members followed.

Mrs. Vacco: What might be confusing is that when time is of the essence, it is a two-step process there's a conceptual preliminary plan and then you go to final and so you would come with this and generalize ?this is what I need to do, this is what I want to do.? And that's what you walked away with at the last meeting; and then it gets fine tuned with more detail. Clearly time is of the essence here, but these all would have been addressed regardless of anybody that would come in and wanted to handle something of this nature.

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Mrs. Hacker recapped the list of issues to be addressed:

- Letter of intent
- Application amended indicating use of building
- Landscaping
- Drainage
- Set back lines
- Letter from adjoining property owner stating that the use of drainage culvert on that property is acceptable
- Identify west side stone line
- Light placement on building

Mrs. Hacker made a motion to table this until all items are addressed for final approval. Seconded by Mr. Pohl. All in favor.

#### PROPOSED DARLING SUBDIVISION

Mr. Pohl read the correspondence:

- Letter dated November 8, 2004 from Richard Brox

#### Neighborhood Concerns and Comments

Mr. Pohl read the letter, dated October 13, 2004 sent by Michael and Lori Mulhisen.

Item #1: Wildwood Drive would no longer be a dead end street and additional traffic would be created for these residents

Mrs. Mulhisen read from Town Code Section 104-29 and made reference to 267 B from the Guide to Planning and Zoning of New York State.

Mrs. Hacker: Our Town Code states that we should not create dead end streets because of the safety factor. The fire companies and emergency agencies also tell us that they do not prefer dead end streets.

Mrs. Mulhisen: I feel that by changing the design of the proposed Creekfield subdivision to a cul-d-sac instead of a line, would allow for Wildwood Drive street to remain as a dead end street as the residents desire and would enhance the appearance of the subdivision.

Mrs. Hacker: What would we do with the four existing lots of the landowners who wouldn't have a street then?

Mrs. Mulhisen: The four existing lots are not being built on.

Mrs. Hacker: They are owned as part of the street to the new subdivision.

Mrs. Mulhisen: But there is no proposal to build on those lots at this time.

Mrs. Hacker: But when those people bought those lots they were under the impression that would be a street and that they are a buildable lot.

Mrs. Mulhisen: It is a buildable lot, however a dead end into the Emerling property which is currently zoned agricultural, so when they purchased that lot they purchased it with the understanding that it was butting up to an agricultural field?

Mrs. Hacker: To Phase II of that development

Mrs. Mulhisen: On the books, adding the development at the time that Draudt purchased those lots.

Mr. Brox: The Town required a stub access to the adjoining parcel, anticipating future growth. It is not uncommon for people who move into a subdivision with a stub to come back four, five, six years later and say "it's always been vacant, why are they building on it?" It's a stub and it's put there by the Town in anticipation of future growth. It's unfortunate that some areas of the Town are buildable and most of it is hillside, and the areas that are buildable are now developing and growth has finally caught up to the fact that they want to proceed with the use of the stub street to use for water lines and traffic and anything else. Your concerns are standard, they're typical of people in a subdivision where it's never developed as they planned behind them, and now all of a sudden it's going to be built on. But the Town historically, not just Boston but all towns look for the attachment of back land to develop by requirement of stub street and that's clear in this case the Town anticipated growth to take place and the stub would connect as shown in this proposed subdivision.

Mrs. Mulhisen: This parcel is not landlocked, it can be accessed from Boston State Road. There is no reason to bother Wildwood Drive residents with additional traffic, when it can be accessed from another safer means.

Mr. Brox: I can continue with the discussion. Generally, the Town of Boston doesn't like to see dead end streets, I'm not sure, over 400 feet without a secondary means of ingress or egress. Now just because your subdivision has been there for several years with only one point of ingress and egress the plan has

always been a secondary point of ingress and egress for safety, emergency vehicles. To enable access to the entire development area from at least two points; and this is finally happening.

Mrs. Mulhisen: Again, Section 104-29 ( read from Town Code).

Mrs. Hacker: That's part of the Town Code, you're not reading all of the Town Code. You're totally ignoring the part of the Town Code that states we shouldn't create dead end streets, or encourage them.

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Darling Subdivision ? Neighbors comments, con?t.

Mrs. Mulhisen: Wildwood Drive is existing and we're not building additional homes on Wildwood Drive. There is no reason that this subdivision, adjacent to Wildwood Drive, needs to disturb Wildwood Drive.

Mrs. Hacker: I need to ask again, what is your decision for those four people that own lots on that property?

Mrs. Mulhisen: They can access their lots off of Wildwood Drive, that's not a concern. The road is on paper.

Mr. Brox: The stub street runs to the property line,

Mrs. Mulhisen: It runs off to the agricultural field.

Mr. Brox: It runs to the property line.

Mrs. Mulhisen: Right, to this current property line. Whether or not that section of that is buildable, I am not sure. That is something that I know there is another wetland issue.

Mrs. Hacker: There isn't any wetland issues involved in those four lots, I don't believe that to be an issue.

Mrs. Mulhisen: Where the stub abuts the agricultural current Emerling property. I'm not sure if that buildable.

Mr. Stringfellow: The way our Town is laid out the most buildable land is the flat land right off of the State Road. The whole section from about B-Kwik (North Boston Market) or so on down nearly all of the buildable land is on the east side of the State Road. If we let that grow up as a whole bunch of dead end streets, and it's going to grow whether we like it or not, we have to make a reasonable plan for that growth. If we let it all grow up as dead end streets we will end with a Boston State Road which is much busier than is now and that will happen anyhow, and we're going to have people living on these dead end streets whose kid cannot ride their bike to the next street because there is no back road, they will have to go out onto Boston State Road. I think what we want to try to develop in that area is connecting

streets from all these dead end roads that are roughly parallel to Boston State Road, but not one long straight street going through so that people can go fast, or that is convenient to be used as a through way. What we show here is people could come from Wildwood down into the Darling subdivision, then they have to go around a curve and then there's another stub road going to the next property; and that's exactly what we should be doing. We have to have streets that will carry traffic parallel to the State Road, but at the same time remain a quiet residential street.

## Item #2: Drainage/foilage

Mrs. Mulhisen read from Boston Town Code ? Section 104-28

Mr. Brox: The developer will only be removing trees from where the road right-of-way is going in. The rear property line trees and shrubs that are being mentioned in this letter would still be on the rear property line of whoever builds on the adjacent lot. It would be their decision to remove all, or any of the growth in their back yard.

Mr. Mendola: I believe that one of the concerns was the grading of the lots to create the swale to provide the adequate drainage; that they would have to be removed to create that. Which is a valid complaint, although in the preliminary approval, or would he have to come back in the Final plan and describe how the grading is going to be done, and then show as a result of the grading show the proposed loss of trees, and the proposed loss of trees that he would want to get rid of.

Mr. Brox: It depends on the grading plan for the subdivision. His mass grading is out in the street area, not in the lots.

Mr. Mendola: He's showing swales going 2/3 of the way back between the lots to get the water?

Mr. Brox: That's between the lots. Her concern is where the rear line matches their rear line, and that isn't being graded.

Mr. Pohl: We haven't seen final lot grading plan yet, that comes at the next stage. That's probably when all of that issue should be addressed.

## Item #3: Decreased property values of the existing homes on Wildwood Drive as well as surrounding streets and difficult resale opportunities

Mr. Mendola: Where you able to get any professional appraisals?

Mrs. Mulhisen: I wasn't able to get any from realtors, because if a realtor isn't going to make any money they generally don't want to speak with you. I really don't want realtors knocking on my door. However, personally I am reviewing real estate for sale, I often see listings indicating that a home is

located on a dead end street. This leads me to believe that property located on a dead end street has a value which is not equal to one on a through street. By allowing Wildwood Drive to become a through street, I believe the Planning Board would directly contribute to the residents of the street realizing a change in their property value.

Mr. Mendola: From personal experience, you're probably going to escalate the value because there is a comparable size, comparable square footage, comparable lot within close vicinity which is going to be built at a much higher price, which is probably going to result in an escalation of property values. One concern I heard previously is that the taxes are going to go up; that person was reassured that a new development does not result in a new assessment.

Discussion followed about the reassessment that is being discussed for the entire Town.

Mrs. Hacker: It is not the Planning Board's task to maintain real estate value. I don't feel that is an issue.

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Darling Subdivision ? Neighbors comments, con?t.

Item #4: Traffic study is warranted

Mrs. Hacker: That has been addressed and that is out of our hands.

Mr. Pohl: That is requested during the SEQR process, and if not we can request it.

Mr. Brox: It will be handled by the Town Board as part of the SEQR review.

Item #5: School bus turnaround

Mrs. Mulhisen: I did not see a proposed school bus turnaround in Phase I. Is there a school bus turnaround?

Mr. Brox: There's a temporary turnaround for Town trucks, etc. which will accommodate school buses and everything else. It's a requirement that they have a turnaround.

Item #6: Transformation of our rural community into a busy suburban area; moratorium on subdivisions suggested

Mrs. Vacco: The Town Board would have to call for a moratorium, and it would require Public Hearing and it would be on a go forward basis. This subdivision is already in the process.

Mrs. Hacker: Mrs. Mulhisen is there anything else you would like to discuss with the Board?

Mrs. Mulhisen: On September 28, 2004 I submitted a petition with 74 signatures. The number one reason they were opposed to the subdivision is that it would cause Wildwood Drive to become a through street and I feel that the Planning Board should take into consideration the residents of the area when they make a decision.

Discussion followed regarding creation of a drainage district and also a lighting district.

Mrs. Vacco: That is the Town Board's responsibility, not the Planning Board's. Today you disapprove or you approve with conditions. To approve with conditions, it has to be something that you have jurisdiction over. You can't make a condition because it's not within the Planning Board jurisdiction or authority. However, that's not saying that you can't make a recommendation to the Town Board, that before they formally address rezoning that this is the Planning Board's position.

Mrs. Hacker asked for comments from the Board members.

Mrs. Vacco: I have been in contact with Muffett Mauche George and we are going to meet regarding the SEQR process so that there are not any steps missed. It's a Class 1, and to date this is a new experience for us; so I am going to get together with her. She is a wealth of knowledge and information. There is an issue between our Town Clerk and Mrs. George regarding Lead Agency status. The Planning Board meets the formal definition of Lead Agency under SEQR because they do have final authority. Mrs. George has asked me to inquire. She is under the impression that Lead Agency must be an elected board, not an appointed board. I do have calls in to the D.E.C. in Albany.

Mr. Brox: In Amherst the Planning Board is Lead Agency, but they have final authority. Site Plans and subdivisions do not involve the Town Board. Here the Town Board is involved in the subdivision review process.

Mrs. Vacco: They really aren't. When the Planning Board approves at certain stages that information will go forward to the Town Board for rezoning.

Mr. Brox: The rezoning requires a SEQR, and therefore you get into the Town Board as Lead Agency and the Town Board will have the traffic studies and the total SEQR.

Mrs. Vacco: So your recommendation is that the Town Board take Lead Agency status on this?

Mr. Brox: That's correct.

Mrs. Vacco: I don't disagree with that. It will involve all the agencies, and I would suggest that a liaison from this Board be appointed to follow the process with the Town Board. I will make a recommendation to that effect.

Mr. Mendola: Streetlights are required by code, but we cannot require a street light district?

Mrs. Vacco: In the Code streetlights are the responsibility of the developer; but the maintenance of those lights fall typically under the district.

Mr. Brox: Article 9 states "where required by the Planning Board, the developer, at time of submission requesting approval of the final plat, shall further file with the Town a petition, properly executed in conformity with the Town Law requesting the creation of a drainage district for the area included with the proposed subdivision." The same holds true for a lighting district. Article 9 covers both, and it's where required by the Planning Board, so you are within your jurisdiction to mention those concerns.

Mrs. Vacco: The Town Board is really proactive about drainage and lighting. I don't think you're asking for anything that they won't be considering.

Mrs. Hacker to Mrs. Mulhisen: I assure you that we are going to address all of your concerns. I don't assure you that we are going to agree with all of them. We are at a timetable where this Board, this evening is required to make a decision.

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Darling Subdivision ? Decision on Preliminary Site Plan

Mrs. Hacker: Our three options are to approve with contingencies, to approve as is, or to disapprove.

Mrs. Hacker: I'll make a motion that we send an approval to the Town Board, with consideration given to the creation of a lighting district and a drainage district, seconded by Mr. Hody. All were in favor.

Mrs. Mulhisen: Will the adjoining property owners be advised of future meetings.

Mrs. Vacco: Yes, there will be more informational hearings. The odd thing about our Code requires that this moves forward with the understanding that the rezoning the developer is planning on will be there. It's really to the detriment of the developer because he has to move forward with the phase that has to be approved; and it still lies in the hands of the Town Board, but as far as the Planning Board is concerned it moves forward with that understanding that he will get the rezone. Again, it is to the detriment of the developer because there is nothing that precludes the Town Board from saying "no".

#### WORK SESSION ? HODGSON AGENCY ? 7336 BOSTON STATE ROAD

Mr. Pohl reported the correspondence:

- Planning Board letter dated October 27, 2004 to Richard Brox requesting his review and comments.
- Planning Board letter dated October 27, 2004 to Foit-Albert requesting their review and comments.
- Richard Brox letter dated November 8, 2004 with his comments.
- Foit-Albert letter dated November 8, 2004 with their comments.

Comments included:

- Making handicapped parking spaces larger
- Sidewalks at new construction especially in North Boston hamlet ? long range plan?
  - o Where do we start and stop
  - o Sidewalks go in the public right-of-way
  - o Policy needs to be developed and adhered too, if so desired
  - o Sidewalks take away from rural atmosphere
  - o Both sides of street or one side
  - o Long range discussion should be discussed with commercial developers
- Handicapped parking spaces placement

- Paving material
- Driveway
- o Measurements
- o Move placement
- Landscaping plans
- Parking spaces size to be corrected
- o Expand parking lot to accommodate increased parking space size
- Identify adjoining property owners
- Orientation map
- Identify bottom note
- Define plat of record
- Identify zoning of adjacent properties

Mrs. Hacker asked that a letter be sent advising Hodgson Agency that they will be included on the agenda of November 23, 2004.

CODE ENFORCEMENT OFFICER KRAMER

- o C.V.S. seems to be on track, but a little bit behind with the paving
- o I'm working with South Towns Rural Preservation engineer ? some changes needed to be made

Mr. Mendola stated that there have been complaints about the signs at Wittmeyer's Jewelry store have been on after store hours. He also asked if Mr. Wittmeyer had obtained a temporary sign permit for the additional sign he has in front of his store.

Mr. Kramer will check with Mr. Lisowski about the sign permit.

## BOSTON PLANNING BOARD NOVEMBER 9, 2004

### WEB PAGE INFORMATION DISCUSSION

- o No names to be included
- o Meeting dates and time should be included
- o Location of meeting
- o Time frame (10 days) for submission of application for inclusion on agenda

### Discussion went to:

- o Proper filing procedure and who is to handle referrals to the Town Board for referral to the Planning Board
- o Time stamping of mail received
- o Simultaneous disbursement to Town Engineer
- o Done by one person to eliminate duplicate submittals
- o Time constraints imposed by Town Clerk for Town Board agenda inclusion

### HOLIDAY MEETING SCHEDULE

- o Meeting on November 24, 2004
- o Meeting on December 12, 2004
- o No meeting on December 28, 2004

### NON-AGENDA ITEMS

## ELECTIONS

To be held at the meeting on December 14, 2004.

## ALTERNATE MEMBER VOTING

Mrs. Hacker stated that Mr. Early's work schedule has kept him from attending meetings, for which he apologizes. She asked Mr. Bernas that he step in, whenever any regular member is absent, and assume voting duties.

Mrs. Hacker: Is there any further business for this Board?

Being none Mr. Mendola made a motion to adjourn at 9:18 PM, seconded by Mr. Stringfellow.

Respectfully submitted,

Michael J. Pohl

Secretary

MJP:tjf