

AMHERST PLANNING BOARD
Wednesday, June 20, 2007 – 7:00 PM
Town Room, Town Hall
MINUTES

PRESENT: Aaron Hayden, Chair; Carl Mailler, Richard Howland, Kathleen Anderson, Eduardo Suarez (7:10 PM), Jonathan Shefftz (7:19 PM)

ABSENT: Susan Pynchon

STAFF: Jonathan Tucker, Planning Director; Niels la Cour, Senior Planner; Sue Krzanowski, Management Assistant

Mr. Hayden opened the meeting at 7:10 PM.

I. MINUTES – Meeting of June 6, 2007

Mr. Mailler MOVED: to accept the Minutes of June 6, 2007 as submitted. Mr. Howland seconded, and the vote was 3-0-2 (Anderson & Suarez abstained).

II. PUBLIC HEARING – REPETITIVE PETITION

7:05 PM RPT2007-00001 – 81 & 69 Meadow Street

Abbass Bozorg – seeks Planning Board consent under the provisions of MGL Ch., 40, Sec. 16, to allow a new Special Permit application to be considered by the Zoning board of Appeals within two years of denial (ZBA FY2005-00022) (Map 5A, Parcels 14 and 16, R-VC District).

Mr. Howland recused himself and abstained from voting.

Mr. Mailler MOVED: to accept the withdrawal based on the letter submitted. Ms. Anderson seconded, and the Motion passed 4-0-1 (Howland abstained).

Since it was not yet time for the next scheduled public hearing, the Chair moved ahead on the agenda.

VII. FORM A SUBDIVISION APPLICATIONS – None

VIII. UPCOMING ZBA APPLICATIONS

The Board chose not to review the following:

ZBA2007-00040, 41 Boltwood Walk – Hee Young Hong

IX. UPCOMING SPP/SPR/SUB APPLICATIONS

Mr. Tucker noted that preparation for Fall Town Meeting needs to start immediately. The deadline for submission of completed zoning amendments is August 31. Mr. Tucker said that the Board should select a replacement for Mr. Mailler so work on zoning amendments could proceed in a timely fashion. The Town Manager has requested the Subcommittee work on a specific list of economic development amendments. Mr. Howland volunteered to serve on the Zoning Subcommittee.

VI. OLD BUSINESS

- B. Town Meeting** – Mr. Hayden reported that Town Meeting voted to refer the Inclusionary Zoning article back to the Planning Board and Housing Partnership/Fair Housing Committee for further study.

X. PLANNING BOARD SUBCOMMITTEE REPORTS

- A. Zoning** – Would be addressed later
- B. Atkins Working Group** – No Report

XI. PLANNING BOARD COMMITTEE REPORTS

- A. Pioneer Valley Planning Commission** – No Report
- B. Community Preservation Act Committee** – No Report
- C. Agricultural Commission** – No Report
- D. Comprehensive Planning Committee** - Mr. Hayden said that the community surveys are coming in and the results will be blended with the work group strategies. Mr. la Cour noted that about 450 surveys have been returned. The strategies will be going on the website, he added.

Ms. Anderson commented that there is a land use meeting on June 26th. Mr. Tucker said that it will be a public meeting held jointly by the Conservation Commission and LSSE to discuss the Open Space & Recreation plan required by the State. That plan is separate and should not be confused with the master plan.

- E. Flood Prone Conservancy Task Force** – Mr. Hayden said that the work of this body is all wrapped up for now.

Mr. Hayden said that the Board also needs to select a representative to the Comprehensive Planning Committee, which they would do later.

III. PUBLIC HEARING – PRELIMINARY SUBDIVISION APPLICATION

SUB 2007-00005, North Amherst Business Park – W.D. Cows, Inc.

Request approval for a 7-lot preliminary subdivision at 169 Meadow Street. (Map 4B/Parcel 6 & Map 5A/Parcel 131; LI & R-LD zoning districts) [continued from May 16, 2007]

Mr. Hayden said that this hearing was continued from the last meeting.

Mr. la Cour noted that the applicant had submitted a letter requesting a 60-day extension of the review period. Mr. Tucker said that the hearing could be continued to August 15th and still meet the timeline.

Mr. Mailler MOVED: that the Board extend the review period as requested and continue the hearing to August 15, 2007. Mr. Howland seconded, and the Motion passed 6-0.

VI. OLD BUSINESS (Continued)

- A. Haskins View** – Mr. Hayden and Mr. Tucker briefly summarized the history of this application, noting that in a previous action the Board had denied the applicant's request for a waiver to allow septic and sewer on the same lot, thereby leaving itself having no choice but to deny the subdivision (March 7, 2007). The applicant had requested that the Board delay its decision while he researched other possible options. At this point, no new information or other options have been presented.

Mr. Tucker noted that as a newly appointed member who had not been present during the public hearing sessions, Mr. Shefftz was not eligible to participate and vote on this application.

Mr. Howland asked if the applicant could move to a collective septic as a solution to the waiver issue. There was brief discussion of this option. Mr. Hayden pointed out that the Board would need to re-open the public hearing if it was going to receive information concerning new options. The Board members decided that it was time to move on.

Ms. Anderson MOVED: WHEREAS, Section V.I.1.b) of the Amherst Subdivision Regulations does not permit the use of private wells and septic systems in the same subdivision development, and

WHEREAS, the applicant for the Haskins View Definitive Subdivision (SUB2006-00009) requested a waiver from Section V.I.1.b) of the Subdivision Regulations, and

WHEREAS, the Planning Board, following due deliberation, denied the said waiver request on the grounds that the evidence provided by the applicant was not sufficient to demonstrate to the Planning Board or the Amherst Board of Health that the on-site private wells and septic systems necessary to support the total number of lots proposed in the subdivision could be safely accommodated in the development in terms of their cumulative potential impacts on groundwater quantity or quality, now

THEREFORE, the Planning Board disapproves the application for Haskins View Definitive Subdivision (SUB2006-00009) on the basis that the subdivision as proposed does not conform to the requirements of the Amherst Subdivision Regulations under Section V.I.1.b).

In accordance with the provisions of MGL Ch. 41, Sec 81U, the Planning Board hereby indicates that in order to conform to the provisions of the Amherst Subdivision Regulations, including Section V.I.1.b), and obtain approval for a definitive subdivision on this site, the applicant would, upon reapplication, need to either: 1) extend public water and/or public sewer to the site, or 2) provide additional evidence sufficient to demonstrate to the Amherst Board of Health that on-site private wells and septic systems can be safely

accommodated in the subdivision, and on that basis justify a future Planning Board waiver of Section V.I.1.b).

Mr. Suarez seconded.

Mr. Hayden proposed a friendly amendment adding “or other means that satisfy the section” at the end of 1) in the last paragraph.

The vote was 4-0-1 (Howland abstained, Shefftz not participating).

IV. PUBLIC HEARING – SITE PLAN REVIEW/SPECIAL PERMIT APPLICATION

SPR 2007-00010/SPP2007-00002 – Bank of America, 75 East Pleasant Street

Combined public hearing to consider Site Plan Review/Special Permit to replace a temporary bank trailer and kiosk that were installed after a fire destroyed the original bank structure, with a kiosk containing a drive-up and two walk-up Automated Teller Machines. (Map 11C/Parcel 322; B-L zoning district) [continued from May 16, 2007]

Mr. Tucker noted that Town Counsel advised that the applicant would need SPR approval from the Planning Board and a Special Permit from the Zoning Board of Appeals. The Board reviewed a copy of Mr. Brackett’s opinion.

Mr. Peter MacConnell, representing the Bank of America, told the Board that he disagreed with Town Counsel’s opinion. This proposal has been in the permit process for three months already, he said, and both applications were submitted (Site Plan Review and Special Permit from the Planning Board) because it was not clear under the Bylaw which permit was needed. Mr. MacConnell asked the Board to act upon both applications under its own authority. If it is determined that a Special Permit from the ZBA is necessary, they will go through that process as well, he said.

Mr. MacConnell provided the bank’s history and described the proposal to construct a kiosk with two ATMs, a public area and a drive-through with two ATMs. The DRB approved the design which, he said, meets the provisions of the Zoning Bylaw.

Also appearing and speaking on behalf of Bank of America were Ms. Donna Perkett, Location Planner; Mr. Rod Topolewski, DRL Associates, Inc.; and Mr. Michael Joyce, Cavanaro Consulting.

Ms. Perkett said that she wanted to thank the Town for its support after the fire. The decision to not build a full-service bank on the site was somewhat driven by consumer needs, she said. The customer base is very sophisticated and with online banking, ATMs and telephones, Bank of America believes that the proposed structure will serve the population, she told the Board. Ms. Perkett said that they worked very hard with the Design Review Board to come up with a suitable structure for the site.

Mr. Suarez expressed concern that a full scale bank was not being proposed for the site, noting that it’s a prime location in Town.

Mr. Shefftz asked if Bank of America had considered shutting it down and putting an ATM on another property. He asked about the location of the nearest bank and how many competitors were in the vicinity. Mr. Shefftz expressed concern that the proposal reduces bank service and is under-development of a major site.

Mr. Howland commented that he lives in the vicinity. Most people use the ATM, he said, and have for years. Mr. Howland said that he thinks the Bank's proposal is a very good solution for the site.

Mr. Topolewski described the structure in more detail, including the brick which he said matches nearby Bertucci's, colors, wood trim instead of prefab metal, and signage.

Mr. Joyce described the proposed landscaping which he said addressed DRB recommendations. Mr. Joyce also described the lighting plan and said that the light height could be lowered but additional fixture would be needed.

After more discussion about the proposal lighting, Mr. MacConnell told the Board that the Bank would be willing to change to meet staff recommendations in the Development Application report.

In response to a question about the survival of plantings, Mr. Topolewski said that an irrigation system will be installed.

During the discussion other issues included, type of tree, access, circulation, parking and visibility and location of the bike rack.

Mr. Howland said it could be very nice if the Bank would put in some benches. Mr. MacConnell said that they had discussed the possibility but didn't believe they would be used.

There was no public comment.

Mr. Howland MOVED: to close the public hearing.

Mr. Tucker noted that the Board should decide what to do about the Special Permit before closing the hearing. He recommended that the Board follow the advice of Town Counsel.

Mr. Hayden said that he wanted to continue on with the Site Plan Review process and review of the Development Application Report. Then the discussion turned back to what to do about the Special Permit. Mr. Suarez expressed concern about setting a precedent.

Mr. Mailler MOVED: that the Board accept the recommendation of Town Counsel that a Special Permit from the ZBA is needed for the drive-through ATM. Mr. Suarez seconded.

Mr. MacConnell presented the argument for the Bank and said that the application was filed under the appropriate Section in the Zoning Bylaw, (5.0430) which is very clear. A nonconforming use is being put back right where it had been, he said, and an applicant has the right to file for a use as if it were a new use.

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There was more discussion about the legal issues and how to proceed, with arguments given by Mr. MacConnell, staff and Board members. Mr. Howland and Mr. Mailler agreed with Mr. MacConnell and said the Planning Board should go ahead and grant both permits. Mr. Tucker again recommended that the Board follow Town Counsel's advice. Mr. Suarez said that the applicant would do whatever they felt was in their interest, but Town Counsel's opinion seemed plain to him. He was advocating for fulfilling his responsibility as a Planning Board member. The Motion was further discussed and clarified.

The Motion failed 1-5 (Howland, Mailler, Hayden, Anderson, Shefftz opposed).

Mr. Howland MOVED: that the Planning Board incorporate and act on the Site Plan Review and the Special Permit in the totality of the hearing and discussion to this point. Mr. Mailler seconded, and the Motion passed 6-0.

Mr. Mailler MOVED: to close the public hearing. Mr. Howland seconded, and the Motion passed 6-0.

Mr. Howland MOVED: to approve SPR2007-00010, Bank of America, as presented, subject to the following waivers and conditions:

Mr. Tucker noted that staff had recommended that the Board grant a waiver for the Soil Erosion Plan.

Waivers

- 1) Traffic Impact Statement
- 2) Soil Erosion Plan

Conditions

- 1) Three (3) light poles shall be allowed with a height limit of fifteen (15) feet.
- 2) Individual signs shall not exceed 10% of the building wall.
- 3) Best Management Practices shall be employed during construction to control stormwater and siltation.
- 4) All landscaping shall be installed and continuously maintained.
- 5) Four (4) copies of the final revised plans shall be submitted to the Planning Department.
- 6) This permit will expire in two (2) years if substantial construction has not begun.

Mr. Mailler seconded, and the Motion passed 5-0-1 (Suarez abstained).

Mr. Howland MOVED: that the Board grant SPP2007-00002, Bank of America, as requested by Attorney MacConnell, and notes that it conforms to Section 10.38 based on the following findings:

(REFER TO "ATTACHMENT A" which Mr. Howland read into its entirety into the record, with one modification to Section 10.395, which is noted on the attachment)

Mr. Suarez asked about the implications if one member elects to abstain or vote no. Mr. Tucker replied that the Special Permit would be denied without six affirmative votes. The applicant could then pursue the Special Permit through the ZBA, he said. Or appeal the Planning Board's decision to the courts, Mr. MacConnell noted.

Ms. Anderson seconded the Motion.

Mr. Suarez asked about past precedent and the discussion returned to the legal ramifications of following or not following Town Counsel's advice. Mr. Howland said that the Board isn't required to accept Town Counsel's opinion and that this is a small matter and should be put into perspective.

Mr. Suarez said that the Board should follow what's best for the Town.

The discussion continued with Mr. Howland suggesting that the Board postpone its decision until it could examine how Town Counsel arrived at his opinion and whether or not the Board needed to see the emails in which Mr. Tucker said staff had tried to clarify the permit process with Town Counsel. Mr. Tucker noted that Mr. Mailler's term was up and this was his last meeting. Without Mr. Mailler, there would not be enough members to act on the application at a subsequent meeting, he noted.

The Motion failed 5-0-1 (Suarez abstained).

VI. OLD BUSINESS (continued)

C. Signing of Decisions – Apple Brook (SUB2007-00006/SPR-C2007-00009)

Mr. Tucker noted that abutters, who had been at the meeting earlier but had to leave, had expressed concern that the conditions of the subdivision approval lacked a provision that signs would be posted regarding the location of the Norwottuck Fish and Game Club property. He noted that those signs were part of the Definitive Plan presented to the Board, were thus a required element of the approved Plan, and that any condition requiring them yet again would be redundant.

The Board signed the decisions as submitted.

X. PLANNING BOARD SUBCOMMITTEE REPORTS (continued)

A. Zoning – Mr. Hayden noted that the Board needed a replacement for Mr. Mailler on the Subcommittee. Mr. Howland indicated that he had a conflict with the Subcommittee's regular afternoon meeting time. Mr. Suarez endorsed Mr. Hayden for the role. It was agreed that the Zoning Subcommittee membership would be Anderson, Suarez and Hayden, and that additional Subcommittee members might be appointed as new members were appointed to the Planning Board.

Mr. Tucker said that the bulk of the zoning amendments under consideration for the Fall 2007 Special Town Meeting are economic development issues and the Town/Commercial Relations Committee will also work with the Subcommittee over the summer.

XII. REPORT OF THE CHAIR – Mr. Hayden invited everyone to stop by his place around 6:00 PM next Wednesday to say goodbye to departing members, Rod Francis and Carl Mailler.

XIII. REPORT OF THE DIRECTOR – No Report

Mr. Suarez said he would not be able to attend the next Planning Board meeting on July 18th.

XIV. ADJOURNMENT

Mr. Howland MOVED: to adjourn this meeting at 10:08 PM. Mr. Mailler seconded, and the Motion passed 6-0.

Respectfully submitted:

Sue Krzanowski, Management Assistant

Approved:

Aaron A. Hayden, Chair

DATE: _____