

AMHERST PLANNING BOARD
May 2, 2007 – 7:00 PM
Town Room, Town Hall
MINUTES

PRESENT: Aaron Hayden, Chair; Kathleen Anderson, Carl Mailler, Roderick Francis, Susan Pynchon, Richard Howland (7:05 PM), Eduardo Suarez (7:06 PM)

ABSENT: No One

STAFF: Jonathan Tucker, Planning Director; Sue Krzanowski, Management Assistant

Mr. Hayden opened the meeting at 7:01 PM.

I. MINUTES

Meeting of April 4, 2007

Mr. Mailler MOVED: to approve the Minutes of April 4, 2007 as submitted. Mr. Francis seconded, and the Motion passed 5-0.

Meeting of April 18, 2007

Mr. Mailler noted that he had not seconded the motion to adjourn the meeting.

Mr. Mailler MOVED: to approve the Minutes of April 18, 2007 with the correction noted above. Ms. Pynchon seconded, and the Motion passed 4-0-1 (Anderson abstained).

II. PUBLIC HEARING – ZONING AMENDMENT

A-4-07 FPC Amendment

Mr. Hayden read the preamble and opened the public hearing for this proposal to amend Section 3.316 of the Amherst Zoning Bylaw to change the permit requirement for surface water impoundments, flood retention ponds, and other surface water storage uses from Special Permit to Site Plan Review, and to add new standards and conditions for the use.

Mr. Mailler said that the Flood Prone Conservancy Task Force (FPC) is proposing the change from Special Permit to Site Plan Review which will allow a little more flexibility. The use would change from a discretionary permit to a use by right. All other local, state and federal regulations would still apply, as they do now.

After discussion and clarification of the proposal's intent, it was agreed to go forward.

There was no public comment

Mr. Howland MOVED: to close the public hearing. Mr. Mailler seconded, and the Motion passed 7-0.

Mr. Francis MOVED: to recommend that Town Meeting adopt the FPC Amendment (Article 10). Mr. Mailler seconded, and the Motion passed 7-0.

III. PUBLIC HEARING – PRELIMINARY SUBDIVISION APPLICATION

SUB2007-00004 - Strawberry Fields, The Levi-Nielsen Company

Mr. Hayden read the preamble and opened the hearing for this request for approval for a 10-lot preliminary subdivision, 650-652 South East Street. (Map 17D/Parcels 21 & 24, RO/PURD zoning district)

Mr. Scott Nielsen, Levi-Nielsen Company, applicant, distributed a checklist which showed that the application complies with state and local regulations. Mr. Nielsen told the Board that the preliminary application is the basis for establishing a cluster. Much more detailed information will be required, and will be provided, at the definitive stage, he said.

Mr. Nielsen told the Board that he is well-versed with the cluster bylaw and thoroughly understands the process. He said that he intends to come back to the Board with a conceptual plan for a cluster, maybe more than one, for the Board to react to.

After a few questions from the Board and clarification of the preliminary subdivision process and the Board's role in the process by the Planning Director, Mr. Hayden turned the hearing to public comment.

Ms. Carol Gray, 815 South East Street, asserted that there were several violations of the subdivision regulations in the application and listed them.

- Under III.A., the applicant had not discussed the proposal beforehand with all of the Town staff listed.
- Under III. B, a color-coded plan was not provided as described.
- The application had not been filed with the Board of Health.
- The signature of all property owners had not been obtained.
- Under III.C., 5., an intermittent stream and vernal pool were not shown.
- An old farm road was not shown; Ms. Gray asserted that it was an easement by proscription, the only access across the property for conservation land east of the Rail Trail, and has been used by citizens for decades.
- Street information (name, width) is missing.
- the drainage plans were insufficient.

Ms. Gray indicated that there were also significant wetlands issues on the site. She recommended that Town Counsel should be consulted before making a recommendation on the preliminary subdivision application. She concluded by urging the Board to go on a site visit and said that she hoped the hearing would be continued.

Mr. Hayden suggested that Ms. Gray send a letter to the Board with her list of technical flaws.

Ms. Gray said that water is a significant issue because the area is very wet. A more detailed drainage plan is needed, she said. Ms. Gray said the Board didn't have to approve the

preliminary application. She noted that previous applications for this property had also been filed and asked if materials from those filings would be considered with this filing.

Mr. Tucker noted that this application would be considered as a new filing based on information submitted for this filing, and that materials submitted for previous applications would not automatically be considered.

Mr. Nicholas Thaw, 666 South East Street, told the Board that he was shocked that the technicalities seemed unimportant.

Mr. Howland commented that the list should be submitted in writing because the verbal presentation was not adequate.

Ms. Joanne Jones, 611 South East Street, spoke about traffic concerns and said that South East Street has become a major thoroughfare and this is a particularly dangerous stretch with no visibility and no sidewalks. Ms. Jones said a peer traffic engineer review should be done.

At this point there was a general discussion about process, the Board's role, what issues should be addressed at the definitive stage, the timeline for the review process, role of the Planning staff, and many other related issues.

The applicant maintained that abutters were using delay tactics and have opposed every application that he has submitted. It's just a preliminary plan, he noted.

Mr. Francis said that a site visit could be scheduled for the definitive stage and issues addressed at that time as well. He noted that preliminary subdivision plan details like streets, drainage, utilities and other features were only required to be shown at this stage "in a general manner".

Mr. Tucker said that this preliminary application meets the requirements in the same manner as previous preliminary subdivision applications the Board had reviewed and approved for this property, and as fully as any that have been submitted in his experience. Again, he noted that subdivision regulations govern the creation of roads, installation of utilities, and subdivision of land into parcels. It is a by-right form of development, he said, and the issues that have been raised can be addressed in the definitive stage.

Mr. Mailler noted that two similar preliminary plans had previously been approved by the Board, with the same or less information.

Mr. Howland read the subdivision regulations aloud, noting that Section III.A. said that applicants "should" discuss the application with all of the Town officials and boards listed. That consultation was not required. He said that he saw no basis for those opposing development on this property to view this stage of the subdivision plan review as a potential hurdle. If there were any failure of standards, all options were still open. He told the other Planning Board members that there was no basis in the subdivision regulations for postponing action on this application. The Board had no grounds to deny the application. He didn't want to create a situation where the Board ended up with less control over the development by default because it had postponed or denied the application without a valid reason.

Mr. Suarez said that he did not feel he had had enough time to consider the application, and that there were too many gaps in information for him to make a decision. He would prefer to continue the hearing.

Ms. Pynchon said she thought the deliberations were being pinched by the Town Meeting schedule.

Mr. Hayden said that Board had only one more week left in the statutory response period in which to act on the application, or it would be constructively granted. The applicant had not indicated any willingness to grant an extension of the statutory review period.

Ms. Pynchon asked staff about the easement. Mr. Tucker replied that no definitive answer had been arrived at. There was little evidence of it in the records, and he thought it unlikely. However, the issue could be addressed by Town Counsel at the definitive plan stage.

Mr. Howland said that this plan wouldn't be a hurdle for the abutters and he could see no basis for postponing approval of the preliminary plan. Referring to the 45-day approval process for preliminary subdivisions, he said the Board could lose control simply by default.

Mr. Bob Wellman, 60 Valley View Circle, said that serious questions about the impact of the development have been raised since the beginning.

Ms. Gray said that the Board held 2 or 3 hearings last time. Ms. Gray again said that the easement issue needed to be addressed.

Mr. Francis noted that the Board was up against the statutory deadline with this application in part because it spent so much time continuing public hearings to ensure full public participation. The Board meets frequently and deliberates long on any given issue. He said that an inability to demonstrate the existence of an easement did not handicap the Board's future actions. The easement, as well as other issues, doesn't have to be resolved at the preliminary stage. Mr. Francis also said that the Board could schedule a site visit at the definitive stage.

Mr. Howland said that the Board did not have sufficient grounds to deny the application and then explain—as state law required—what the remedy would be to gain approval. A denial at this point wouldn't do anything. A court wouldn't agree with it. There would be no benefit in denying the preliminary plan. The purpose of filing the plan was to freeze the zoning, he said.

Mr. Suarez repeated that the Board did not have enough information and/or time to make a decision.

Mr. Mailler said that the remaining questions would be answered in the definitive plan review stage. The same standards need to be applied consistently to all applications.

Mr. Nielsen told the Board that he would be willing to discuss the easement issue at the definitive stage. He said that he didn't want this application to be held to a different standard at the preliminary stage than the previous applications.

Mr. Thaw asked whether or not the specific issues raised by Ms. Gray would be addressed. Mr. Tucker listed the issues and spoke to each in turn:

- III.A. – It is recommended but not required that the applicant discuss the plan with all of the officials listed. Most had received transmittals for the application, and a number had responded.
- III.B. – No color-coded plans have been required for preliminary subdivision applications for many years.
- The application has been filed with the Board of Health.
- Mr. Nielsen has submitted documentation demonstrating that he is now the owner of record for all property involved with the subdivision application, and his signature was included.
- III.C. 5. - Intermittent streams were shown on the plans, including one off of the property.
- III.C. 4. – The easement issue could be addressed during the definitive subdivision plan review stage. Despite the assertions of an easement, no clear evidence has been presented demonstrating that an easement exists.
- The street is shown and its width indicated “in a general manner” as required.
- Under the regulations, proposed drainage need only be shown on preliminary plans “in a general manner” as required.

Mr. Francis MOVED: to close the public hearing. Mr. Mailler seconded.

Ms. Pynchon asked about the written materials, abutters said they would submit. Mr. Tucker noted that written materials could still be submitted.

Mr. Howland commented that the plan has no purpose other than to hold the zoning.

The Motion passed 6-0-1 (Hayden abstained).

Mr. Francis MOVED: that the Board approve SUB2007-00004, with the following recommendations:

- 1) The concerns of the Development Application Report be addressed for the Definitive application.
- 2) Outstanding staff issues shall be addressed for the Definitive application.
- 3) The technical issues raised by abutters and members of the public at this public hearing be addressed prior to the submission of the Definitive Plan.

After discussion and more questions from the Board, Mr. Tucker said that he would request a written opinion from Town Counsel on the easement issue.

Mr. Howland seconded, and the Motion passed 7-0.

IV. PUBLIC HEARINGS – ZONING AMENDMENTS (continued)

A-1-07 Inclusionary Zoning (Petition)

To amend Section 15.10 of the Amherst Zoning Bylaw to mandate that all affordable housing units provided under inclusionary zoning requirements be solely low-income units eligible for recognition on the Commonwealth's 40B Subsidized Housing Inventory (petition of V. O'Connor). (continued from April 4 & 18, 2007)

Mr. Hayden said that the petitioner was here earlier but had to leave.

Mr. Mailler said that the Zoning Subcommittee discussed this proposal and recommended continuing the hearing to May 16.

Mr. Suarez noted that the Board had requested a written report from the Housing Partnership/Fair Housing Committee but had not received anything.

Mr. Rosenblatt, staff liaison for the HP/FHC, said that there was nothing new to add. The HP/FHC's vote stands as 5-1 opposing the article. The committee will discuss it again tomorrow night, he said.

After further discussion, the Board decided to continue the hearing.

Mr. Mailler MOVED: to continue the public hearing to May 16, 2007. Mr. Suarez seconded, and the Motion passed 7-0.

A-2-07 Farm Stands

To amend Section 3.312 of the Amherst Zoning Bylaw to bring existing regulations for two categories of principal use farm stands into conformance with revised provisions of MGL Ch. 40A, Sec. 3. (continued from April 18, 2007)

Mr. Mailler said that the Zoning Subcommittee recommended that the Planning Board recommend that Town Meeting adopt this amendment.

Mr. Francis MOVED: to close the public hearing. Mr. Howland seconded, and the Motion passed 7-0.

Mr. Mailler MOVED: that the Board recommend that Town Meeting adopt this amendment (Article 8). Mr. Francis seconded.

Mr. Tucker noted that the actual language discussed and recommended during the public hearing would be moved in an amended motion on Town Meeting floor.

The Motion passed 7-0.

A-3-07 Accessory Farm Stands

To amend Section 5.090 of the Amherst Zoning Bylaw to allow and regulate accessory farm stands on properties of 2 acres or more in R-N, R-O, and R-LD Districts and selected portions of the PRP District. (continued from April 18, 2007)

Mr. Mailler said that the Zoning Subcommittee decided that this proposal needs further discussion on the thresholds that would determine which farm stands these regulations would apply to and, therefore, recommends that the Board ask Town Meeting to refer the article back.

Mr. Howland MOVED: to close the public hearing. Mr. Francis seconded, and the Motion passed 7-0.

Mr. Mailler MOVED: that the Board recommend that Town Meeting refer this article (Article 9) back to the Planning Board and Agricultural Commission. Mr. Howland seconded, and the Motion passed 7-0.

V. NEW BUSINESS

A. Lot Release Request – Lot 9, Palley Village

Mr. Tucker said that the Town Engineer is okay with the release.

Mr. Francis MOVED: that the Board release Lot 9, Palley Village. Mr. Mailler seconded, and the Motion passed 7-0.

The Board signed the Certificate of Performance.

B. Lot Release Requests – Lots 26, 31, 32 and 64, Linden Ridge Road

Mr. Tucker noted that the base course of pavement had not yet been completed, and recommended that the Board add a condition to release of these lots.

Ms. Ellen Stutsman, representing Tofino Associates, Inc., said that the paving is scheduled to be done in about two weeks. She asked if the Board would release the lots with the condition that the Certificates of Performance be held in the Planning Department until the work is completed.

Mr. Francis MOVED: to release Lots 26, 31, 32 and 64, Linden Ridge Road (Amherst Hills Subdivision) and that the Planning Department hold the Certificates of Performance until it is verified that the conditions have been met. Ms. Pynchon seconded, and the Motion passed 7-0.

C. The Massachusetts Federation of Planning and Appeals Board – Spring Area Meeting – Notice in packet.

D. Other – Mr. Tucker noted that Mr. Jonathan Shefftz has been appointed to fill Ms. Scipioni's seat.

VI. OLD BUSINESS

The Board reviewed the warrant and discussed the following:

Article 7, Easement – Atkins Corner, Route 116 and Bay Road

Mr. Mailler MOVED: that the Board recommend that Town Meeting adopt this article. Mr. Howland seconded, and the Motion passed 6-0-1 (Pynchon abstained).

Article 12, Bylaw Amendment – Public Shade Trees

Mr. Francis MOVED: that the Board recommend that Town Meeting adopt this article. Mr. Mailler seconded and the Motion passed 6-0-1 (Anderson abstained).

Mr. Howland stepped down from the Board at 9:45 PM.

Article 33, Petition – Bylaw Amendment – Energy Conservation by Maintaining the Night Sky

Mr. Vincent O'Connor, the petitioner, said the Board could make a recommendation. Mr. Suarez said that it's a progressive proposal and supportive of sustainable development.

There was no motion made under Article 33.

Article 37, Acceptance of Chapter 39, Section 23D of the Massachusetts General Laws – Board Member's Absence of One Session May Not Cause Disqualification

Mr. Tucker reported that this article was expected to be referred back.

Mr. Francis noted that he may not be available to speak to the FPC amendment, depending on when it comes up at Town Meeting.

VII. FORM A (ANR) SUBDIVISION APPLICATIONS

The Chair endorsed the following:

ANR2007-00025, Henry Street – W.C. Cows, Inc.

Mr. Mailler MOVED: to establish June 1, 2007 as the date that the new lots will be eligible for building permits, under the Phased Growth Bylaw. Mr. Francis seconded, and the Motion passed 6-0.

ANR2007-00026, Meadow Street, Andrews & LaVerdiere

VIII. UPCOMING ZBA APPLICATIONS

The Board decided not to review the following:

ZBA2007-00032, 163 Northampton Road – Gregory R. Haughton
ZBA2007-00033, 129 Blackberry Lane – Marianne Maher

IX. UPCOMING SPP/SPR/SUB APPLICATIONS

Mr. Tucker noted that Veridian Village will give a presentation at the June 6th meeting. The following public hearings are scheduled for the Board's May 16th meeting:

SUB2007-00005, North Amherst Business Park preliminary subdivision
SPR2007-00010/SPP2007-00002, Bank of America joint application
SUB2007-00006/SPR-C2007-00009, Apple Brook Cluster Subdivision

The May 16th meeting will begin at 5:00 PM and will be held in the Home Economics Room at the Regional Middle School.

X. PLANNING BOARD SUBCOMMITTEE REPORTS

A. Zoning – given under “Public Hearings”

B. Atkins Working Group – No Report

XI. PLANNING BOARD COMMITTEE REPORTS – No Reports

XII. REPORT OF THE CHAIR – No Report

XIII. REPORT OF THE DIRECTOR – No Report

XIV. ADJOURNMENT

Ms. Anderson MOVED: to adjourn this meeting at 10:23 PM. Mr. Francis seconded, and the Motion passed 6-0.

Respectfully submitted:

Sue Krzanowski, Management Assistant

Approved:

Aaron H. Hayden, Chair

DATE: _____