

**AMHERST PLANNING BOARD**  
**Wednesday, April 5, 2006 – 7:00 PM**  
**Town Room, Town Hall**  
**MINUTES**

**PRESENT:** Aaron Hayden, Chair; Paul Bobrowski, Chris Boyd, Rod Francis, Mary Scipioni, Carl Mailler, Leandro Rivera

**ABSENT:** Adrian Fabos

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

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Mr. Hayden opened the meeting at 7:00 PM.

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

**VII. FORM A SUBDIVISION APPLICATIONS – None**

**VIII. UPCOMING ZBA APPLICATIONS**

The Board decided not to review the following:

ZBA2006-00040, 28 Amity Street – Emily Wadham  
ZBA2006-00041, 373 Main Street – Jeffrey B. Krauth  
ZBA2006-00042, 11 Phillips Street – Stephan Gharabegian

**IX. UPCOMING SPC/SPP/SPR/SUB APPLICATIONS**

Mr. la Cour noted that two preliminary subdivision applications have been filed by Levi-Nielsen for South East Street. A definitive subdivision application has been filed for Haskins View. The Board did not schedule site visits.

**I. MINUTES – Meeting of March 1, 2006**

Mr. Francis MOVED: to accept the Minutes of March 1, 2006 as submitted. Ms. Scipioni seconded, and the Motion passed 6-0-1 (Bobrowski abstained).

**II. PUBLIC HEARINGS –ZONING AMENDMENTS**

Mr. Hayden read the preamble and opened the hearings.

**A-16-06, College/South East Street Rezoning**

To amend the Official Zoning Map to change the zoning designation for the following properties on Assessor's Map 15C:

Parcels 2 and 7 – Rezone portions of these properties from R-N to COM.  
Parcels 3, 4, 8 and 9 – Rezone from R-N to B-VC.

Parcel 41 - Rezone from R-N to R-VC.

Parcel 42 – Rezone from R-N and COM (portion) to R-VC.

Parcels 16 and 17 – Rezone portions of these properties from COM to R-N.

Mr. Bobrowski said that the landowner approached the Zoning Subcommittee with this request which the Subcommittee agreed made sense. The surrounding houses are mostly rentals and the owners of these houses have told the Zoning Subcommittee that they support the rezoning. This seems to be a good location to expand the village center zoning and the Zoning Subcommittee supports it.

Mr. Tucker gave a brief history of the area and noted that there is a resident-owned house, and the resident supports the proposal. Mr. Bobrowski noted that this use could continue because it is grandfathered.

Mr. Benjamin Gagnon, 162 South East Street, asked if the tenants at his address could continue to rent. Mr. Tucker confirmed that the use could continue.

There was no additional public comment.

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

Mr. Bobrowski MOVED: that the Board recommend that Town Meeting adopt A-16-06, College/South East Street Rezoning. Mr. Francis seconded, and the Motion passed 7-0.

### **A-13-06, South East Street PURD Rezoning**

To amend the Official Zoning Map by rezoning Map 17D/Parcels 21 and 24, from Outlying residential/Planned Unit Residential Development (R-O/PURD) to Low Density Residential (R-LD).

Ms. Carol Gray, petitioner, summarized the article for the Board. Ms. Gray said that this area should more appropriately be zoned low density. A PURD would not be appropriate here particularly because of density and traffic issues, she said. Given the Planning Board's recommendations to the ZBA on the PURD, Ms. Gray suggested that if any individual Planning Board members thought the rezoning petition had merit, they should support a motion to have the Planning Board refrain from making any recommendation to Town Meeting on the petition warrant article.

Mr. Tucker summarized the history of zoning in the area.

Mr. Scott Nielsen, 171 Gray Street, urged the Board to recommend that Town Meeting reject the article, saying that the primary motive is to stop development. Mr. Nielsen then summarized why he recommended rejection and distributed a handout listing the reasons (Letter to Planning Board Members, April 5, 2006, Re: Spot Zoning). Mr. Nielsen said that he strongly urged the Board to recommend that Town Meeting reject the article.

There was some discussion about the zoning process before Mr. Hayden took public comment.

Ms. Heather Colson, 784 South East Street, said that she was concerned about the incontinuity of the proposed development on this parcel with the patterns of development in the area.

Ms. Sonya Sofield, South East Street, said that this is a key parcel in terms of view shed. Others have been built out, she said.

Ms. Kate Thaw, 666 South East Street, suggested that concentration of residential should be in village centers, keeping the remaining land open.

Mr. Bob Wellman, 60 Valley View Circle, expressed concern that the successful development of this PURD will result in the paving of Mill Lane and added that he thought "the less growth, the better".

Ms. Jocelyn Johnson, 603 South East Street, said that the proposed development doesn't fit in with the rest of South East Street. The majestic view would be more likely to survive if the area is zoned R-LD, she commented.

Mr. Hayden asked staff to explain how Town meeting action would affect what can happen on the parcel. Mr. Tucker explained that the filing of a preliminary subdivision application froze the zoning in place for a period of time. It's likely that a cluster subdivision will be filed very soon, he said, which is also a use by right, and could include almost the same number of housing units as the proposed PURD development.

Ms. Sofield comment that maybe this development will go ahead, but the rezoning should still be pursued.

Mr. Tucker noted that the community maintained more control over development on this property under the PURD, which is by Special Permit.

Mr. Nielsen commented that property owners shouldn't be deprived of their rights because of view issues.

Mr. Wellman said that the density and size of Mr. Nielsen's development are not in character with the neighborhood. Larger, new homes would be more in character.

Ms. Sofield commented that a PURD allows for mixed use and this one does not. Mr. Tucker responded that the PURD regulations allow for mixed uses, but do not require them.

Mr. Bobrowski MOVED: to close the public hearing. Mr. Francis seconded, and the Motion passed 6-1 (Boyd opposed).

Mr. Hayden and Mr. Tucker summarized the Board's options for making a recommendation: (1) Not Recommend, (2) Refer Back, or (3) Recommend.

Ms. Scipioni said that she was struggling with making a decision and was trying to address the issue of the greater public good. Having a Master Plan would be helpful. Without that, she said, the issues for her were that there was an exchange of open space which needs to be considered. There is a social equity issue, she said, with only high-end housing being built in

the area now. The constitutional rights of the land owner are an issue, as well, and denial of the Special Permit could result in litigation which could be a huge expense for the Town. Mr. Tucker showed the Board a map showing the subject properties in the context of extensive surrounding acreage of permanently preserved land.

The Board discussed whether it should make a recommendation. Mr. Bobrowski said that the Board was obligated to make one. Mr. Mailler said that the focus of the Board's consideration should be on the zoning petition, not a specific project. The issue is whether or not this is a good zoning proposal, he said.

Mr. Bobrowski MOVED: that the Board not recommend adoption of Article A-13-06, South East Street PURD Rezoning. Mr. Rivera seconded.

Mr. Boyd commented that in a general sense it makes sense, but would be taking away the rights of a property owner.

The Motion passed 6-1 (Hayden opposed). Mr. Hayden indicated that he would have preferred to refer the article.

### **III. PUBLIC HEARING – SITE PLAN REVIEW APPLICATION**

#### **SPR2006-00005 – Fresh Side 39 South Pleasant Street – Kent Chu**

Request approval for seasonal outdoor dining on sidewalk in front of restaurant (Section 5.041), and new signs and lighting. (Map 14A, Parcel 251; B-G Zoning District)

Mr. Hayden read the preamble and opened the public hearing.

Mr. Kent Chu, applicant, said that he is moving his current Fresh Side restaurant to 39 Pleasant Street and wants to have outdoor dining, consisting of four tables with two chairs each. These will be against the display windows. Mr. Tucker noted that Mr. Chu will have to get Select Board approval to site the outdoor dining tables partially in the public way.

Mr. Michael Olkin spoke in support of the proposal, commenting that Amherst needs more outdoor dining. Mr. Scott Nielsen agreed, and supported the proposal saying that it will add to community spirit.

It was noted in the Development Application Report that the Design Review Board reviewed the proposal and recommended approval of the new signs and facade treatments with two conditions. Ms. Scipioni disagreed with Condition b) "... consider adding ellipsis points...." The Board noted that DRB recommendations were advisory.

There was no additional public comment.

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

Mr. Bobrowski MOVED: to approve SPR2006-00005, 39 South Pleasant Street, Fresh Side, subject to the following conditions and waivers:

Conditions

- 1) As recommended by the Design Review Board, the two lines of text on the main sign (“a little eatery and tea place” and “fresh side” shall be centered over the doors below and set on the same horizontal baseline.
- 2) Four (4) copies of the final plans shall be submitted to the Planning Department.
- 3) This permit shall expire in two (2) years if substantial food is not consumed.

Waivers

- 1) Traffic Impact Statement
- 2) Soil Erosion Plan
- 3) Lighting Plan
- 4) Landscape Plan

**IV. PUBLIC HEARING – COMBINED SUBDIVISION/SITE PLAN REVIEW**

**SUB2006-00006/SPR-C2006-00004, Simmons Cluster Subdivision, 447 Bay Road –  
Tofino Associates, Inc.**

Combined public hearing to consider a cluster subdivision application for a single-family residential development consisting of eight dwelling units, including one affordable unit located on Bay Road. (Map 26A/ Parcels 45, 46 & 47, Map 26C/Parcel 142; R-O & R-LD districts) [continued from February 15 & March 1, 2006]

Mr. Doug Kohl, applicant, the Board and staff reviewed the issues in the Development Application Report and Mr. Kohl’s letter dated February 8, 2006, in which he requests a number of waivers and explains why. Mr. la Cour noted that staff recommend granting the waivers, with a couple of exceptions. Reinforced concrete bounds should be required along the frontage of Bay Road. Since the stormwater management system and similar elements will still need to be checked, the inspection fee could be reduced but should not be waived entirely (possibly reduced to \$4.00 instead of \$6.00).

Ms. Scipioni said that she was not comfortable with all of the waiver requests. However, Town staff indicated that the waiver requests are generally consistent with providing a roadway that would meet typical requirements for a common driveway rather than a standard subdivision road. The road would only be serving 7 houses, Mr. la Cour noted, and the waivers would allow the roadway to be designed in a manner that would minimize the impact of tree cutting and earth moving on the site. Town staff support this design approach, as long as it is certain that this is a private road and will remain so in perpetuity. Mr. Kohl assured the Board that South Middle Street is intended to remain a private subdivision road owned by the homeowners association and that language ensuring that status will be put in the Homeowners Association documents.

Mr. Tucker noted that the Board would need to make a finding if it decided to grant a waiver allowing the maximum grade of the road to exceed 10%.

Ms. McPhearson submitted revised drawings of utility plans to Mr. la Cour.

There was no public comment.

Mr. Francis MOVED: to close the public hearing for the Subdivision Application. Mr. Boyd seconded, and the Motion passed 6-0.

Mr. Francis MOVED: to close the public hearing for the Site Plan Review Application. Mr. Boyd seconded, and the Motion passed 6-0.

The Board decided to consider the applications separately and discussed the subdivision first. Ms. Scipioni expressed concern about the offset between the proposed road and Middle Street on Bay Road. Mr. Leandro said he shared the same concern and wanted to review the plan a little more.

Mr. Boyd MOVED: to reopen the Subdivision public hearing. Ms. Scipioni seconded, and the Motion passed 5-1 (Francis opposed).

Mr. Bill Hart said that turning left of Middle Street onto Bay Road can be tricky. It will be difficult to see oncoming traffic, he said. Mr. Kohl said that the Town Engineer didn't have problems with sight lines. He said perhaps the road could be straightened out and/or moved further east. The applicant, Board and staff discussed the design and how or if it could be changed.

Ms. Laura Chadbourne, 473 Bay Road, said that she makes the turn everyday without a problem.

Mr. la Cour said that the sight lines are good and since the road will only serve seven houses, the Town Engineer and Planning staff believe the alignment is safe as proposed.

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

Mr. Francis MOVED: to approve SUB2006-00006, South Middle Street Cluster Subdivision, subject to the following conditions and waivers:

Conditions

- 1) Final engineering, utility, and stormwater management plans, and related details shall be approved by the Town Engineer.
- 2) The locations and specifications of water mains and hydrants shall be approved by the Town Engineer and Fire Chief.
- 3) Four (4) copies and a mylar of final revised Definitive Subdivision plans shall be submitted to the Planning Department for endorsement by the Planning Board.
- 4) Lots shall be pinned and the base course for the road installed prior to the release of lots.
- 5) No future private or public ways shall be permitted off of the private way by this approval.

Waivers

- IV.D. Performance Guarantee.
- V.G.1.b. Provision for the projection of street for future use and access to adjoining property.
- V.G.1.c. Prohibition of reserve strip along adjoining property.
- V.G.1.d. Maximum 800-foot length of a dead-end street and waiver of minimum 50-foot outside curb radius. The cul-de-sac as designed meets requirements for the turning radius of fire vehicles.
- V.G.1.e. Minimum 19.685-foot curb radius for Minor Streets. While the right radius entering South Middle Street meets this standard, the left radius is 18.5 feet due to the angle of intersection with Bay Road.
- V.G.2.2. Twenty-foot minimum pavement width for Minor Streets. In accordance with common driveway standards, as originally presented in the Preliminary Plan, pavement will be 16 feet wide, with 2-foot reinforced gravel shoulders on each side.
- V.G.2.3. Minimum radius of curves for Minor Streets. Travel speeds on South Middle Street are expected to be lower than on a Minor Street since it is not a through street and only serves 7 houses.
- V.G.2.4. Minimum crown. The road will have the same percentage crown, but it will be less than 4 inches since the road is narrower than a Minor Street.
- V.G.2.5. Minimum vertical and horizontal sight distances. Travel speeds on South Middle Street are expected to be lower than on a Minor Street since it is functionally a common driveway that serves 7 houses.
- V.G.2.7. Maximum grade. Some sections of the road are up to 14.8%, which is within the common driveway maximum of 15%. This will minimize cut and fill and related tree clearing.
- V.G.2.8. Minimum shoulder width for sections of road in cut.
- V.G.2.9. Minimum shoulder width for sections of road in fill.
- V.G.3. Minimum 125-foot offset of Middle Street, across Bay Road. The offset to Middle Street is 70 feet.
- V.G.4.a. Maximum 4% vertical grade of first 100 feet of road. The entering grade as designed is 5%.
- V.G.4.b. Requirement that horizontal curves not begin within 100 feet of centerline of Bay Road. The first Point of Curvature is located at station 65+07, measured from the center of Bay Road.

- V.I.1.d. Maximum 10 feet per second sanitary sewer flow velocity in favor of TR-116 standards of 12 feet per second.
- V.I.2.e. Requirement for catch basin at street intersection to intercept surface runoff. There is an existing catch basin on Bay Road on the uphill side of South Middle Street that prevents water from going across the road. On the downhill side, there is an existing ditch on Bay Road which flows approximately 60 feet to an existing catch basin.
- V.J.2.b. Maximum distance between hydrants.
- VI.H. Sidewalk and bicycle path requirement. Not required for common driveways.
- VI.L.2. Street tree requirements. As much tree cover as possible will be retained on the sides of the road.
- VI.L.3. Bank planting requirements. Banks will be seeded for erosion control with meadow grasses and wildflowers and will eventually revert back to forest.
- VI.L.4. Corner planting requirements. Corners will be seeded for erosion control with meadow grasses and wildflowers. This will be maintained by the homeowners association so as not to interfere with sightlines.
- VI.N. Street light requirements. Street lights are not required for common driveways and are not in keeping with the low-density, rural nature of the area along Bay Road and Middle Street.
- VI.P. Requirement for stone or reinforced concrete bounds in favor of pins. South Middle Street will remain a private way, not a Town road. However, concrete bounds shall be placed at property corners along Bay Road.
- VI.Q. As-built plan requirement as construed in the Subdivision Regulations in favor of providing documentation of utility structures, inverts, stubs and water shut-off valves.
- VI.S. Inspections of road construction. The applicant will comply with inspections required for all utilities that tie into Town systems (sewer, water and drainage).
- VIII.C.1. All inspections except sewer, water and drainage systems.
- VIII.C.3. The rate cost of inspections shall be decreased from \$6 per linear foot to \$4 per linear foot.

Findings

- 6.330 The subdivision road does not have a substantial detrimental impact on the declared intent and purposes of any overlay district because the site is not situated in any such district.
- 6.331 The subdivision road will not create an undue safety hazard.



- 6.332 The subdivision road will not have a substantial adverse environmental impact on groundwater quality, wetlands, significant wildlife habitat, prime farmland or other environmentally sensitive resources. The steeper grade of the road is intended to minimize these impacts.
- 6.333 The subdivision road will not remove, destroy or obstruct prominent natural features and view. The steeper grade of the road is intended to preserve as many existing trees as possible and reduce the visual impact of the subdivision.
- 6.335 The subdivision road will not remove, destroy or irrevocably alter significant historical, archeological and/or cultural resources. None of these resources have been identified on the site.

The Board reviewed the above conditions, waivers and findings again, and then Mr. Mailler seconded the Motion, which failed 4-2 (Rivera, Scipioni opposed; Bobrowski abstained)

Mr. Rivera and Ms. Scipioni both expressed concerns about the turning radius and length of the roadway before the horizontal curve, as well as the number of waivers requested. Mr. Francis said that the plan is in conformance with regulations and there were no technical or engineering reasons to reject it. Mr. la Cour said that conformance is modified by the applicant's request for so many waivers, but that was because the Board had agreed to the common driveway in order to foster a much better development than originally proposed.

At this time, Mr. Tucker advised the Board that it should either revote the motion or reopen and continue the hearing.

Mr. Rivera said that he wanted more technical information.

Mr. Mailler MOVED: to reopen the hearing. Mr. Rivera seconded, and the Motion passed 6-0 (Bobrowski abstained).

Mr. Kohl told the Board that so many waivers are requested because he has changed the proposal from a common driveway to a private statutory road. The Town Engineer is not concerned about sight lines, he noted. While it would be unusual for public ways not to be lined up at an intersection, it's not unusual for a lesser drive, he said. The Board should look at what is being proposed relative to what could be proposed by right, he suggested.

After further discussion, Ms. Scipioni MOVED: to close the public hearing. There was no second.

Mr. Nielsen commented that Town Engineer review and support of the traffic issue(s) should be sufficient.

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

Ms. Scipioni explained that she voted no, not to create problems but because she wanted to voice her concerns. She would be willing to change her vote, she said. Mr. Rivera said that his concern about traffic was in a general sense not only about this development. He also said that he would reconsider his vote.

Mr. Francis MOVED: that the Board approve SUB2006-00006, South Middle Street Cluster Subdivision subject to the Conditions, Waivers and Findings of his previous Motion. Mr. Boyd seconded, and the Motion passed 6-0 (Bobrowski abstained).

Mr. la Cour noted that under Article 14 of the Zoning Bylaw, this project is subject to the Phased Growth Bylaw. Therefore, the Board completed the Phased Growth Bylaw Tally Sheets and awarded a point total of 75, which modified the development schedule to allow the construction of 100% (8) of the units within the first year.

Mr. Boyd MOVED: that May 2006 be established as the eligible date for the first building permit. Mr. Boyd seconded, and the Motion passed 6-0.

Mr. Francis MOVED: to approve SPR-C2006-00004, South Middle Street, subject to the following conditions and waiver:

**Conditions**

- 1) Two (2) affordable housing units for which the applicant received Phased Growth points shall be provided on Old Belchertown Road.
- 2) Landscaping as shown on the plans shall be installed and continuously maintained.
- 3) Four (4) copies of the final revised plans shall be submitted to the Planning Department.
- 4) This permit shall expire in two (2) years if substantial construction is not begun.

**Waiver**

Traffic Impact Statement

Mr. Mailler seconded, and the Motion passed 6-0 (Bobrowski abstained).

The Board voted 6-0 (Bobrowski abstained) to approve "South Middle Street" as the road name.

**V. NEW BUSINESS**

**A. Chapter 61A Withdrawals**

Market Hill Road – Elizabeth F. Riley

Mr. Boyd MOVED: that the Planning Board recommends that the Town not exercise its right to purchase the property. Mr. Francis seconded.

Mr. Bobrowski asked if the Conservation Commission or Farm Committee had a recommendation. Mr. Tucker said that it was not a large or high priority property.

The Motion passed 7-0.

Mr. Hayden recused himself and stepped down from the Board for consideration of the next article. Mr. Mailler assumed the Chair.

Stanley Street and South East Street – Amherst College

Atty. Bill Hart, representing Amherst College, said that the College intends to withdraw 3.5 acres out of Chapter 61A classification in order to donate the land to Pioneer Valley Habitat For Humanity, Inc., which will construct four affordable sustainable housing units on the property. A portion of the land which is currently being hayed will remain under a permanent agricultural restriction.

Mr. Bobrowski enthusiastically MOVED: that the Planning Board recommend that the Town not exercise its option to purchase the property. Mr. Francis seconded, and the Motion passed 6-0.

Mr. Hayden returned to the Board and reassumed the Chair.

- B. “The Community Planning Act “ – in packet**
- C. Correspondence – Amherst Cinema Arts Center – in packet**
- D. Other – Mr. la Cour announced that the Comprehensive Planning Committee will host a “Meet the Master Plan Consultant” event on May 2 from 7:00 to 9:00 PM.**

Mr. Bobrowski noted that applications were available for a lottery for first-time home buyers for homes at Palley Village.

The Board received a request from Mr. Jeffrey Krauth asking for approval to withdraw a Site Plan Review application and refund of the \$300 application fee. It was determined that a Special Permit would be needed.

Mr. Bobrowski MOVED: that the Board allow the application (SPR2006-00006, Elements Hot Tub Spa) to be withdrawn without prejudice, and the applicant’s fee be refunded. Mr. Boyd seconded, and the Motion passed 7-0.

Ms. Scipioni stepped down from the Board at 10:30 PM.

Mr. Francis said that a proposal to ask Town Meeting to support an increase in the CPA surcharge tax and schedule a town wide vote on the matter is likely to be on the Town Meeting warrant.

**XIV. ADJOURNMENT**

Mr. Bobrowski MOVED: to adjourn this meeting at 10:35 PM. Mr. Francis seconded, and the Motion passed 6-0.

Respectfully submitted:

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Sue Krzanowski, Management Assistant

Approved:

\_\_\_\_\_  
Aaron A. Hayden, Chair

DATE: \_\_\_\_\_