

PLANNING & ZONING COMMISSION  
 Regular Meeting  
 JULY 19, 2011

The Planning & Zoning Commission held a regular meeting on Tuesday, July 19, 2011. Chairman Michael DelSanto, called the meeting to order at 7:00 o'clock, p.m.

The following Commissioners were present, viz:

|                         |                 |
|-------------------------|-----------------|
| James Sinclair          | Steve Kalkowski |
| Francis Kenefick        | Zaya Oshana     |
| Michael DelSanto, Chair |                 |

Alternates: Lisa Conroy  
 Randall Gage

Ex-officio members present were as follows, viz:

Mary Savage-Dunham, Town Planner  
 Anthony J. Tranquillo, Town Engineer (Arrived at 7:03 pm)  
 Mark J. Sciota, Deputy Town Manager/Town Attorney \*  
 Garry Brumback, Town Manager

(\* Arrived at 7:03 pm with the meeting in progress.)  
 Absent: Paul Chaplinsky, Commissioner  
 Kelly Kennedy Del Debbio, Commissioner  
 James Macchio, Alternate

The Chair seated Mr. Gage for Mr. Chaplinsky and Ms. Conroy for Ms. DelDebbio. A quorum was determined.

The Pledge of Allegiance to the American Flag was recited by everyone in attendance.

The Minutes are being prepared summary style and the video and audio tapes are available for further detail.

**MICHAEL DELSANTO, Chairman, presiding:**

APPROVAL OF MINUTES - Regular meeting of June 21, 2011

Mr. Sinclair made a motion to approve. Mr. Kalkowski seconded. Motion passed on a majority voice vote with Ms. Conroy abstaining.

**BUSINESS MEETING:**

A. Lovley Development Group, site plan application for proposed medical office building, 1115 West Street (SPR #1592).

Sev Bovino, Planner with Kratzert, Jones represented the applicant. Since the last meeting we received some additional comments and revised the plans to respond to those comments and responded in writing to staff.

I believe staff is ready to recommend approval for the application.

The Town Planner said the application is ready for action.

Mr. Sinclair made a motion to approve SPR #1592. Mr. Kalkowski seconded. Motion passed 7 to 0 on a roll call vote.

B. Yard Metals, flood plain filling application, 45 Newell Street (FF #227)

Mr. Bovino represented the application. At the last meeting staff had not had a chance to review the plans. The application was for 40 cy of material to be deposited in the flood plains. Since then we have revised the plans to eliminate the 40 cy altogether. Now it is only disturbance, but the grades are going to be the same as they are today.

We are going to add one additional beam on the bridge to make it wider. The total width is 8' now going to 14'.

The Town Planner indicated the application was ready for action.

Mr. Kenefick made a motion to approve. Mr. Sinclair seconded. Motion passed 7 to 0 on a roll call vote.

C. DC Development & Construction, LLC, 4 lot subdivision application, 207 East Street (S #1282)

Stephen Giudice with Harry Cole & Son represented the application. We have a 4-lot subdivision on a 2.46 acre parcel of property on East Street, west of #207, which was the D'Angelo home which was recently sold.

We have a piece of property zoned R-12 along the roadway and R-20/25 in the back. We're proposing 3 R-12 building lots along the front of the property and we have a rear lot proposed in the half acre zone. That rear lot is three times the requirement per the regulations.

Lots serviced by public water and private onsite subsurface sewage disposal systems.

Runoff is being handled through the use of infiltration systems connected to the roof leaders.

We have submitted the plans and received staff comments. We're in the process of revising the plans. Hopefully, in the next few weeks we'll get those squared away to staff's satisfaction.

Moving forward through the process, we will be requesting a rear yard determination for the rear lot.

2,000 square foot range for home size with the rear lot being a little bit bigger.

The communal driveway was discussed as being created because of sight distances.

Mr. Sinclair made a motion to table which was seconded by Mr. Kalkowski. Motion passed unanimously on a voice vote.

D. Hawk's Landing, request for release of \$3,000 Bond in Lieu of Site Plan compliance, 201 Pattonwood Drive SPR #1533

The Town Planner advised staff supports this. Mr. Sinclair made a motion to approve. Mr. Kalkowski seconded. Motion passed unanimously on a voice vote.

E. Dean's Stove and Spa, request for extension of bond in lieu of site plan compliance, 120 West Main Street (SPR#1558)

Attorney Bryan Meccariello of 142 North Main Street represented the applicant. We're here tonight requesting two things. One is an Agenda item which is the extension of the bond in lieu of site plan compliance. There was a punch list or check list that was circulated and Dean performed the items on that list subject to staff review.

I sent Tony and Mary two photos within the last hour of two of the items: hot patching the CL&P hole and then the restriping of the handicapped spot.

What's not on the Agenda is there is some confusion going back historically regarding the site plan modification. I've discussed this with the Town Planner today and it's proper for me to bring it to your attention.

He explained when they were here on the site plan modification; the primary topic was the plantings in the center area. We went from planting to a brick area and then we made up the plants planting all around in different planters. On the map, in the westerly portion where the existing entrance is, there is a 4' wide sidewalk which was

existing. It was initially proposed to be extended to be 8' and then 9 in one section where it heads west towards the Rails to Trails.

That was an oversight on my part for not bringing it to your attention. On the plan for site plan modification I said: see attached plan. And, that was submitted. Included on that plan was the area I'm speaking of. That was a punch list item and our recollection is we were not going to widen that area. We would keep it consistent to the sidewalk on the east side.

And, Page 2 of our plans at that point talked about Black-Eyed Susans and plantings within that planter. So, when we left, we said, okay, the site plan was approved. And, we planted those plans in that separate planter.

Then when we got the punch list item we were taken aback a little bit. Because it called for the removal of that planter and making a 9', 8' apron at that point.

That's the issue we brought up with staff and that's the issue you need to deal with either tonight or at your next meeting.

With respect to the other items on the check list, I believe we've complied. I do need to speak to the Town Attorney regarding liability for patching on the old section.

Attorney Sciota questioned Attorney Meccariello: When you came in for the modification, you told the commission at that time you wanted to change the sidewalk? Attorney Meccariello explained after reviewing the Minutes and the video, we talked primarily about the plantings. I had the map and I submitted it.

Attorney Sciota clarified Attorney Meccariello's position: Is your position that when the board about the landscaping, the sidewalk disappeared, also?

Attorney Meccariello said the map stamped and received showed the 4' existing. Then on Page 2 of the map it showed the detailed plantings.

Attorney Sciota again asked Attorney Meccariello: You applied for modification of the site plan. You talked about the modifications to put landscaping into this island. You also had other changes on this map and you never brought the changes up to staff or the commission during that presentation?

Attorney Meccariello explained it wasn't my goal at that point -- it was on the map. We can submit another application for modification of the site plan.

Attorney Sciota again clarified: My position would be that you applied for modification of a site plan. You explained to the commission and the staff what you were modifying. If your requirement

is that the staff and the commission has to put your new plan over your old plan to check every little thing that may have changed, I think that's a burden that is certainly not going to be up to the town.

You have an obligation to bring up to this board when they voted what modifications are being made. I don't agree that just because you have a map and its part of a modification ---you stated what you wanted to modify in your application and your presentation. That's what the commission took you at your word on.

Attorney Meccariello said he understood. That's what Part II of the map is very important. We did talk about certain plantings last time. If that planter box was to be eliminated because you're going to hold this to a 9 or 8 foot apron, it's an oversight. Is it a minute oversight? I'll take the blame for not explaining it and we'll gladly come back with a site plan modification and explain what we're doing.

Attorney Sciota explained the Town's position as being what was modified was the island and only the island. You have the right to come back with a modification of a site plan to ask this commission to waive or modify something from the original site plan approval if you so desire.

The maps that are presented are one thing. The presentations are vital for this board. You explain to them exactly what you are going to be modifying.

Discussion.

The Town Planner clarified the Agenda item before you tonight is for a 90-day extension or some version less than that of the bond in lieu of site plan compliance. That's what's before you for voting tonight.

What the applicant is bringing up is some punch list items they feel this board waived and there has been discussion going on. I'm sure the applicant could produce maps and we have copies of maps.

I would like to add to the discussion that I do have the application form for the site plan mod. It says: See attached revised site plan. And, then under it, written in, it says --- and it's not my writing --- revision to landscape/center island arrangement, et cetera. This was on the October 19<sup>th</sup> meeting. The video is on and I did go back and review and I suggest you all do the same. Very clearly during staff's presentation I say: for the record before you tonight is a site plan modification simply for the central island area and that landscaping.

Staff's position is that site plan mod was because of the central island which was not built according to plans and the applicant had to

come back and get your approval so the approval matched the way they built it in order to move forward with their project. That was the main impetus of that mod.

Mr. Kenefick asked: Are we talking about an 8' sidewalk to a 4' sidewalk? Attorney Meccariello explained the original site plans called for making that section an 8' sidewalk. The plans then changed and held the original sidewalk. It is for about 30 feet in length.

Mr. Kenefick asked if the major problem why they were here is because you want it to be a 4' sidewalk instead of an 8' sidewalk.

Attorney Meccariello said it was one of two remaining items.  
Discussion.

Mr. Kalkowski asked the Town Planner to comment on her memo dated June 29<sup>th</sup>, the three items. Are they complete?

The Town Planner pointed out that Number 1 is the item that the applicant is talking about. There's never been a site plan mod submitted to deviate from the original approved plans with regard to the widening of that sidewalk there. That's open. The applicant would prefer the commission not require them to do this.

Number 2 is still open.

Number 3, there has been some discussion, but I believe it's still open.

Mr. Kalkowski made a motion to deny.

(No second)

Discussion of the three items.

The Town Planner said the applicant doesn't have a CO or a TCO on their restaurant.

Discussion.

The Town supports the extension noted Attorney Sciota. We do not want to shut any businesses down over there.

Mr. Kenefick made a motion to grant a 90-day extension. Mr. Sinclair seconded.

Discussion of how many extensions have been applied for and granted. The Town Planner advised staff is supportive of the extension.

Discussion about what would happen if the extension were not granted.

The Chair stated the commission is not here to shut any business in town.

The inspection procedure was explained by the Town Planner in response to a question by Mr. Gage.

Motion passed 6 to 1 on a roll call vote with Mr. Kalkowski opposed.

F. Ridgeview Estates, request for 2 year extension, 1985 West Street (SPR #1360.2)

Sev Bovino, Planner with Kratzert, Jones represented the applicant. He stated he contacted the applicant before the end of the day to be sure he would have someone here to represent him. He said he did not receive any correspondence so he asked me to make the request that was made in writing on his behalf. The reason why is the economy. He's not selling the units and the project is progressing.

The applicant said there have been inspections up there and he hasn't received any correspondence. IF you refer to the lawsuit next door, he said they are still working on it.

Ms. Savage Dunham commented this is on for an extension of their term for the project which is pretty standard. Normally, you give a 5 year term at once, but with this project you have been giving smaller bites of the apple.

They still need to get an extension from wetlands before you can act on it. For tonight, when discussion is done, I would suggest a table.

I would also comment staff has been out there inspecting and the project is still active. They're working on the southeast corner of the site. They're trying to get the back foundations in so they can finish the connection point of the drainage. Explained.

Discussion of the drainage work being done at the southeast corner.

The work that is going on now is completely in accordance with the approved site plan and inspections have been ongoing. This is ongoing work, routine. The site adjacent with the civil matter is all seeded, loamed and grassed. It was inspected over a year ago. We still don't have the final as built but it is premature to get it now.

Mr. Kenefick asked about the building permit process and the foundation permit and discussion followed.

Mr. Kenefick said in his opinion the site is not safe. People could fall on the foundation. Explained.

The Chair said he got calls from people who live by it. They are represented by an attorney and I am going to grant them a few minutes to come up and say what's going on.

Attorney Bryan Meccariello, 142 North Main Street here on behalf of Anna Mullins the adjacent property owner.

He explained the lawsuit pending.

He also reviewed the history of the matter referencing past Minutes and punch list items.

Attorney Meccariello explained the intentional trespass and berm installation on his client's property by this applicant.

We're here tonight because the applicant is asking for a continuation to be able to continue developing the site in the protection of the berm. The concern is there are violations of the site plan.

Explained.

Read comments off the plan and explained.

Attorney Meccariello asked the commission to walk the site to view the erosion along the ridge and the trees are dying. The system in the corner doesn't work.

Explained.

The Town Planner commented she can layout the maps for the next meeting but I would like to state that the commission did originally entertain some of these comments referred to. After that when it became evident to the town there was not going to be effective communication between parties, the commission and the applicant had no choice but to forward a site plan application that operated independent of cooperation from the neighbor. What you ultimately acted on and approved was a site plan modification with the smart drain trenches, the retaining wall. From town staff position, at this point in time, the applicant does have an approved site plan and the wall and drainage system as constructed to date with the possibility of some minor elevation offsets, which are typical, is following your approved site plan. They are not in violation of their approval. They're a developer who is trying to move forward and continue to build their project according to the plans this commission approved.

Discussion of what happens if this extension request fails.

Mr. Tranquillo said he was at the site before the work was done, but he could go out between now and the next meeting.

The Chair advised all commissioners it would be a good idea to go and look at the site. In a heavy rain event we need to go out there and see what's happening.

Safety hazards involve the whole town and not just this applicant or the adjacent property owner. We're remiss if that is happening and we don't get a handle on it.

Discussion of the berms installed on the adjacent property by the developer. Mr. Kenefick said this has to be corrected. Before we approve any extension they ought to get the berm off the Mullins' property.

The Town Planner advised Wetlands does have to act first and there are two completely separate matters. The site plan you approved does not involve taking down the berms which are on private property and does not involve having the applicant divert the flow of water from the abutters property on to this property. The work that would have that done is off site. This site plan right now, the way you have it approved is not within their ability to take any action that is going to redivert that flow because they don't have the authority to do that.

Discussion.

Extensive discussion between Attorney Meccariello and the Commissioners on the matter in court.

Bernie Mullins made a brief presentation to the PZC on the matter which is in court.

Mr. Oshana made a motion to table which was seconded by Mr. Sinclair. Motion passed unanimously on a roll call vote.

G. West Pines Section II, request for road acceptance, West Pines Drive, pending receipt of a maintenance bond in the amount of \$75,000 (S#1213)

Staff supports this. Mr. Sinclair made a motion to approve which was seconded by Mr. Oshana. Motion passed unanimously on a voice vote.

H. Request for release of \$40,000 maintenance bond, Mar-Joe Estates (S#1250)

Staff supports this. Mr. Sinclair made a motion to approve which was seconded by Mr. Oshana. Motion passed unanimously on a voice vote.

I. Michael Meade, request for release of \$4,600 earth excavation bond, 72 Summer Street (EE #131)

Staff supports this. Mr. Sinclair made a motion to approve which was seconded by Mr. Oshana. Motion passed unanimously on a voice vote.

#### **ITEMS TO SCHEDULE FOR PUBLIC HEARING**

No new ones to schedule other than what is presently scheduled.

#### **ADMINISTRATIVE REPORTS**

Ms. Savage Dunham very briefly reviewed the two public hearing items for the next meeting and I remind you they are before you in public hearing.

(1) Zone Change #537 - proposed zone change for the northwest quadrant of town. It's the R-40 land between West Street and Mount Vernon Road, Welch Road and the Bristol Town line with a couple of exceptions as shown on the material going around tonight.

I have attached a listing of affected neighbors. This will be for testimony at the public hearing at the next meeting.

(2) Zoning Text Amendment #559 - again passed around the revisions proposed to relax the front yard setback requirements for structures on corner lots. I transmitted this to the ZBA, as well, for their information.

No other reports.

#### **RECEIPT OF NEW APPLICATIONS**

None this evening.

Mr. Sinclair made a motion to adjourn which was seconded by Mr. Oshana. Motion passed unanimously on a voice vote.

(Whereupon, the meeting was adjourned at 8:01 o'clock, p.m.)