

**GROTON PLANNING BOARD
NOVEMBER 6, 2003
MINUTES**

Vice Chairman Degen called the meeting to order at 7:30 PM in the Town Hall
Members present: Barringer, Clements, Degen, Eliot, Lewis, Perkins and Wilson

PUBLIC HEARING (con't) – WEST THRONE MODIFICATION

The Board continued the public hearing to consider the proposed modification of the West Throne definitive plan submitted by the Groton Conservation Trust. The motion was made by Lewis to continue the public hearing on November 20, 2003 as requested by the applicant. *The motion was seconded and passed unanimously.*

(Chairman Barringer arrived.)

PUBLIC HEARING (con't) – A.L. PRIME SPECIAL PERMIT & SITE PLAN REVIEW

The Board held the continuation of the public hearing to consider the application submitted by A.L. Prime for a special permit to install underground storage tanks in a Water Resource Protection District. The Board also considered the site plan for renovations to the existing service station including the addition of a convenience store. Applicant Nasser Buisier, Attorney James Gmeiner, engineer Anthony Guba of Ayoub Engineering, engineer Gary Shepherd of David Ross Associates, and many abutters were present.

Mr. Shepherd presented the minor modifications to the plan in response to comments from Judith Nitsch Engineering, Inc. (JNEI), the Board's consulting engineer. Mr. Shepherd said the only outstanding issues are the lighting under the canopy and the question of whether an Environmental Impact Report (ENF) must be filed with MEPA since the site is located within an Area of Critical Environmental Concern (ACEC). Mr. Shepherd said an ENF is only required if a state permit is required. He submitted a copy of a letter dated February 14, 2003 from the ACEC program relative to the Lost Lake Fire Station also located in the ACEC.

Planning Administrator Michelle Collette asked if the project requires a curb cut from MassHighway. Mr. Shepherd said, "no," because the existing curb cut is larger than the proposed curb cut. Chairman Barringer asked the applicant to submit a written statement from MassHighway documenting that a new curb cut permit is not required.

Chairman Barringer read the report from JNEI, the letter from the ACEC program regarding the Lost Lake Fire Station, the letter from Town Counsel, and the memorandum from the Building Inspector.

Town Counsel's letter stated that the proposed change requires a special permit from the Zoning Board of Appeals as an alteration of a non-conforming use in the Water Resource Protection District. The Building Inspector stated that the proposed change does not require a ZBA special permit.

Mr. Gmeiner said he does not agree with Town Counsel's opinion – this is not a change of use. Gas stations and convenience stores are permitted in a B-1 District. The site is zoned B-1. The only non-conformity is the existing gas station in the Water Resource Protection District. No expansion of the gas station is proposed so this is not a "substantial extension of use."

Mr. Buisier said he could add a convenience store tomorrow and the Board of Health permit would be the only required permit.

Member Degen asked about the façade. Mr. Guba said the canopy would be white with a 14" yellow and blue stripe.

Member Degen asked if different grades of gasoline would be pumped from one pump. Mr. Buisier said, "yes."

Member Clements asked if the only change is the size of the storage tank. He added that the installation of gasoline tanks are permitted with a special permit from the Planning Board, and a convenience store is a by-right use in the B-1

District. Member Clements said the ZBA must determine if the convenience store is more detrimental to the neighborhood.

Mr. Gmeiner said he asked the Building Inspector in May for a verbal opinion on whether a ZBA special permit is required. The Building Inspector determined that it did not.

Member Wilson said this is a good case for the ZBA to review. The size of the gasoline station is being reduced and there will be no repairs. The traffic report indicates that there will be no traffic impact. Mr. Shepherd said there would be no new traffic, only the existing traffic on Route 119.

Member Wilson said he is not sure about statement on traffic. He said the Board must abide by Town Counsel's recommendations and let the ZBA decide.

Member Eliot said she shares the concerns expressed by other Board members.

Member Perkins agreed that the applicant should follow Town Counsel's recommendation and go to the ZBA for a special permit.

Member Lewis said the Planning Board is considering two applications – one for a special permit to install underground tanks in a Water Resource Protection District, and the other for site plan approval. It is up to the Building Inspector to check zoning compliance issues.

Member Barringer asked about the number of pumps. Mr. Shepherd said there are six pumps there today. After the renovations, there will be four pumps with eight hoses, but that could be changed tomorrow if the Board wishes.

Mr. Gmeiner said there must be a substantial increase in the non-conforming use to require a ZBA special permit. The only non-conformity here is the gasoline station in a Water Resource Protection District.

Member Degen stated that the fuel tanks will increase from the existing 15,000 gallons to the proposed 20,000 gallons. This is a 33% increase. Mr. Gmeiner said the installation of tanks is permitted as an accessory use with a special permit from the Planning Board.

Member Lewis expressed concern about over-powering lighting near a residential neighborhood.

Mr. Shepherd said the lighting complies with the Site Plan Review regulations. The only bright lighting is under the canopy for safety reasons. The lighting meets the requirements at the edge of the canopy. Mr. Guba added that the existing streetlights would be removed so the amount of lighting will be reduced.

Attorney Matthew Donohue, representing abutters Kenney, Cain, and Sweenie, said the letter from Town Counsel is not a surprise. A clear public process is needed including a special permit from the Planning Board for the underground tanks, site plan review by the Planning Board, and a special permit from the Zoning Board of Appeals for an extension of a non-conforming use. He said the standard on non-conforming uses focuses on alterations or expansions. The applicant is altering tanks, adding a canopy, and adding a convenience store within the structure. Mr. Donohue said the list of requested waivers shows that something is wrong. These issues should be addressed during the ZBA's public hearing on the special permit.

Member Wilson agreed that §218-6E states, "alteration or expansion." He said it is clear that a ZBA special permit is required.

Member Lewis asked about signs in the windows. Planning Administrator Michelle Collette said signage is under the jurisdiction of the Sign Committee.

Member Degen said the JNEI report states that a curb cut from MassHighway is required. The Planning Board needs clarification on this point including a letter from MassHighway. Mr. Shepherd said he submitted a plan to

MassHighway. If a new curb cut is required, they will file an application for a curb cut as well as an ENF with MEPA.

Reporter Connie Sartini asked about the Building Inspector's role in the process. Planning Administrator Michelle Collette said the Building Inspector is the Zoning Enforcement Officer under State statute, Chapter 40A, §7. Mr. Gmeiner said the Building Inspector already made a determination on this matter. The abutters can appeal to the ZBA when the building permit is issued. Chairman Barringer read from the letter to Town Counsel from Mr. Gmeiner.

Member Degen asked about the size of the canopy. Mr. Shepherd said it is 2058 sq ft.

Member Degen said the size of the canopy exceeds the current size of the gas station. He suggested that the applicant withdraw without prejudice and apply to the ZBA for a special permit.

Mr. Shepherd said it is not fair to compare the existing open area with the pumps to the area that will be under the canopy. One is covered; the other is not.

Member Wilson said he agrees that the addition of the canopy does not increase the existing use. However, there may be room for compromise on the 14" color stripes on the canopy.

Chairman Barringer asked where the Board wanted to go from here. Member Degen reiterated his opinion that the applicant should apply to the ZBA for a special permit. Mr. Gmeiner said he disagrees. This is not an expansion of a non-conforming use. It is up to the Building Inspector to make the determination on whether a ZBA special permit is required. It is not part of the Planning Board's purview.

The motion was made by Degen to send a memo to the Building Inspector requesting clarification on his opinion requesting that he consider the following facts in making a determination:

1. The number of gasoline pumps will increase from six to eight;
2. A 2058 sq ft canopy will be added to the site;
3. A convenience store will be included.

The motion was seconded and passed unanimously.

The Board voted unanimously to continue the public hearing on November 13, 2003 at 7:30 PM.

SITE PLAN REVIEW (con't) – BULLDOG REALTY TRUST, 14 STATION AVENUE

The Board received a request from Attorney Aleta Manugian to extend the deadline and continue review of the site plan submitted by Bulldog Realty Trust.

The motion was made by Perkins to extend the deadline to December 21, 2003 as requested by the applicant. ***The motion was seconded and passed unanimously.***

The motion was made by Degen to continue the review of the site plan on December 4, 2003 at 7:30 PM. ***The motion was seconded and passed unanimously.***

SITE PLAN REVIEW – SURRENDEN FARM, LOT 8

The Board continued its review of the site plan submitted by Farmers Row, LLC, for Lot 8, Surrenden Farm. Cynthia O'Connell of Beals Associates and Attorney Ray Lyons were present.

Chairman Barringer asked the applicant if Member Degen could participate in the discussion because he was not present for the previous discussion. Mr. Lyons said since it is not a special permit or a public hearing, it is fine for Member Degen to participate.

Member Degen asked about the clearing limitation plan. Ms. O'Connell pointed out the limit of work area shown on

the plan.

Member Clements asked about the walkway. Ms. O'Connell pointed out the pedestrian path that will run from Shirley Road to the clubhouse.

The motion was made by Lewis to approve the Level II site plan entitled, "Plan to Accompany Site Plan Review Application for Lot 8 Surrenden Farm in the Town of Groton, Massachusetts," prepared by Beals Associates, dated June 23, 2003, with revisions through November 6, 2003, with the following waivers and conditions:

Waivers:

1. § 218-25K.1.1 to allow submission of a USGS locus map at a scale of 1"=200'.
2. § 218-25K.1.8 from the cut and fill analysis because the overall project has been reviewed extensively during the special permit and definitive plan process.
3. § 218-25K.1.11 from the requirement of a zoning chart because the Planning Board granted a special permit for Major Residential Development and Open Space Residential Development.
4. § 218-25K.1.15 from the requirement to provide sight distance calculations at the proposed intersections because the intersections were approved as part of the Surrenden Farms definitive plan.
5. § 218-25K.2.1.4 from the open space requirements because Lot 8 is included within an Open Space Residential Development and is subject to a special permit granted by the Planning Board.
6. § 218-25K.2.2 from a review of lighting because lighting was reviewed during the Surrenden Farm special permit and definitive plan processes.
7. § 218-25K.1.1 from the requirement of using 8.3 inches of rainfall for the 100-year storm rather than 6.5 inches of rainfall which is consistent with the Subdivision Regulations.
8. § 218-25K.2.4.2 from the requirement that driveway entrances, exits and typical lane widths be a minimum of 24' in width because the main access drive was approved as part of the definitive subdivision plan. The proposed clubhouse driveway is 16' wide to minimize impact on the surrounding woodland.
9. § 218-25K.4.7 from the requirement to provide vertical granite curbing at the edges of all surface areas because an open drainage system was approved as part of the definitive plan. Vertical granite curbing will be used at both turn-arounds.

Conditions:

1. A meandering walkway will be constructed in the center of the area between Common Drive 2 and Common Drive 3 to enhance pedestrian safety. The location of the walkway and construction details shall be shown on the site plan prior to endorsement.
2. As offered by the applicant, the structures will be painted earth-tone colors to blend into the woodland setting.
3. Trees and shrubs shall be planted as specified on the "Plant Schedule" shown on Sheet D1 of D2 on the plan dated October 14, 2003 as well as on the "Plant Schedule" shown on Sheet 1 of 1 the plan dated November 6, 2003. In addition, a row of evergreens shall be planted along the northerly edge of the lot to provide additional screening from Shirley Road. No invasive species shall be planted. The complete "Plant Schedule" and location of plantings shall be shown on the site plan prior to the Planning Board's endorsement.
4. Vegetative screening shall be used to screen the clubhouse from Farmers Row. The clearing limitation shown

- on the site plan shall include the existing vegetation in the vicinity of the clubhouse.
5. The common driveways are private drives and will not be eligible for street acceptance as public ways.
 6. The Homeowners Association is responsible for plowing, maintenance and repair of the common driveway. The common driveway must be passable at all times.
 7. Fire hydrants shall be installed in all locations recommended in the memorandum dated October 29, 2003 from the Water Department. The installation of the public water supply system shall conform to § 34612C Fire Protection and the specifications of the Groton Water Department.
 8. The Board of Health shall retain jurisdiction of the soil remediation activities related to the conversion of the former orchard areas to residential uses. No construction related activities, including proposed remediation efforts, shall begin on the site until the Board of Health has approved the soil remediation plan for Lot 8 proposed by the applicant.
 9. There shall be no net increase in the rate or volume of storm water runoff from the site as required in Section 218-25G(1)(c).
 10. All signs must conform to the Sign By-Law, Chapter 196 of the Code of the Town of Groton.
 11. The removal of any excess earth material from the site requires a Certificate of Exemption from the Earth Removal By-law, Chapter 134 of the Code of the Town of Groton. Chapter 134, Section 10 Exemptions.
 12. An erosion and sedimentation control plan must be submitted to the Earth Removal Advisory Committee for its review and approval as required in Chapter 198 Soil Erosion and Sedimentation Control.
 13. The applicant shall address any outstanding issues in the report dated October 30, 2003 from Judith Nitsch Engineering, Inc. (JNEI).
 14. Three copies of the final site plan, stamped by a Registered Professional Engineer and approved by the Planning Board, shall be submitted to the Board for endorsement as required in Section 218-25G(3).
 15. All conditions of Special Permits 2003-02 and 2003-05 and the Surrenden Farm definitive plan approval dated July 25, 2003 remain in effect.

The motion was seconded and passed unanimously.

PUBLIC HEARING (con't) – SPECIAL PERMIT, VERIZON/GIBBET HILL TOWER

The Board continued the public hearing to consider the application submitted by Verizon to add its equipment to the telecommunication tower on Gibbet Hill. Attorney James Valeriani and RF engineer Jarod Robinson represented Verizon at the hearing. David Maxson of Broadcast Signal Lab, the Board's consultant, was also present.

Chairman Barringer stated that the Board received a report dated November 15, 2003 from its expert, David Maxson.

Mr. Valeriani submitted a summary on Verizon's need for the proposed equipment on the tower.

Mr. Valeriani said he met with abutter William Wilcox regarding screening view of the tower from his property. Verizon is willing to screen its ground-based equipment with a wooden fence and arbor vitae. In addition, Verizon will pay to relocate existing trees and plant new trees on the Wilcox land.

Mr. Valeriani said the 150 ft monopole was approved two years ago with four carriers. When Verizon moves its equipment to the new tower, it will increase its coverage by 58%. The PCS overlay and microwave dish will be installed on the tower as well. The microwave dish must be at least 95 ft to connect with the South Acton tower. Mr.

Valeriani said Verizon's needs are different than other carriers. He noted that Verizon's proposed installation is smaller in diameter than Nextel's.

David Maxson said he visited the site with Mr. Valeriani and Mr. Webber. This application raises interesting issues. It is not as clear cut because it is an upgrade. This application contains cellular and PCS on the same level. It would be a challenge to fit both into a flush-mounted arrangement. Mr. Maxson said at the present time there are four carriers on the tower. Two have full arrays, and two are flush mounted. Verizon must demonstrate what will happen in the future if the equipment is flush mounted. Mr. Maxson said the Board could deny, approve, or reach some middle ground with Verizon on this application. He said Verizon is standing firm on its need for the microwave dish to connect with its tower in South Acton. If Verizon uses a standard array, there is room on the 10 ft space. He asked if flush mounting restricts Verizon's ability to provide as much service as they can.

Chairman Barringer asked if there is a microwave dish on the DEM fire tower today. Mr. Valeriani said, "yes," but it should be at least 95 ft high. Verizon would install the dish at a lower elevation on the Gibbet Hill tower, but the space has already been leased to another carrier.

Member Lewis asked how Verizon would screen the tower from the abutter. Mr. Valeriani said he spoke with Verizon's construction manager about landscaping or moving trees on the Wilcox property. Verizon agreed to pay Mr. Wilcox \$2000.00 and have the homeowner do the work. Verizon will provide screening around the ground equipment at its own costs.

Abutter William Wilcox read and submitted a written statement to the Board. Mr. Wilcox said moving existing trees is very expensive and \$2000.00 will not cover the costs. Plantings must be placed in more than one area to provide effective screening. Member Lewis asked Mr. Wilcox to submit an estimate of the costs to the Board.

Member Perkins said the Board must decide on a standard array or flush-mounted equipment.

Mr. Valeriani said Verizon is not able to use flush mounted equipment because it will cause problems with the microwave dish and the PCS antennae. He referred to the affidavit submitted by Verizon's RF engineer, Jarod Robinson.

Mr. Maxson said he is sensitive to the concerns of having antennae too close to other carriers. A series of accommodations would be required by Verizon to make this work. More data is required at this point. Mr. Maxson asked if the installation of cellular equipment and the microwave dish, and not PCS, would create a capacity problem tomorrow or two years from now. He said he believes cellular and microwave dish could be flush mounted without the PCS equipment and it will provide coverage, but there is no guarantee in court.

Chairman Barringer asked if Verizon is the only carrier with both cellular and PCS licenses. Mr. Maxson responded, "in this market." Chairman Barringer asked if denial of one and not the other is a denial of service. Mr. Valeriani said it would be a prohibition of both coverage and capacity. The PCS network works well in 50% of the country. Verizon purchased the license from the FCC since another carrier could not afford it.

RF engineer Jarod Robinson said Verizon would pursue other tower sites in outlying areas if they have to flush mount on the Gibbet Hill tower. The microwave dish is very important to Verizon.

Real estate manager Steven Bozkurtian said the Webbers contacted Verizon about moving its equipment to this tower. The present DEM site has a standard array and microwave dish. However, the DEM tower does not provide the required height.

Member Perkins asked what is the difference between PCS and cellular. Mr. Robinson said they are different frequency bands. PCS has higher frequency signals that do not travel as far. More towers are needed closer together with PCS than with cellular.

Mr. Maxson agreed, adding that cellular was created in the 1980's and the FCC just began auctioning PCS licenses in

1995.

Member Eliot said there are three towers on Gibbet Hill today: the DEM fire tower, the emergency services tower, and the Webber's telecommunication tower. She said she would like to see all the equipment on one pole. She suggested that all the carriers work together to minimize the number of structures needed. Mr. Bozkurtian said two carriers cannot share the same antennae.

Mr. Maxson said the carriers on the tower can cooperate as owners and as tenants, but there is competition between carriers. The tower owner cannot change the lease with the other carriers.

Chairman Barringer said it would be difficult from a business perspective to open up existing lease agreements between the owner and the other carriers.

Mr. Valeriani said this is a monopole, not a lattice tower with many microwave dishes. The pole is already constructed. It is too late to redesign the monopole. He noted that there are free market considerations that the Board must consider.

Chairman Barringer said the Board cannot request that the other carriers modify their arrangements since there have not been any compliance issues with the special permit conditions.

Member Lewis said the Board needs an opinion from Town Counsel on this matter.

Member Eliot said the Planning Board should be able to direct the effort. Member Eliot said the Planning Board is the special permit granting authority for telecommunication towers.

Mr. Maxson said the Planning Board must be convinced that there is a significant difference between standard and flush mounted equipment. The Board would have to convince another carrier to sub-lease space for the microwave dish, but there is a problem of potential interference.

Mr. Valeriani stated contractual rights cannot be broken by the government. Member Eliot said it can be worked out among the parties. Mr. Valeriani said there is no basis in federal, state or common law to ask the applicants to come back before the Planning Board. It is a violation of private property rights. There is no competitive reason for the carriers to cooperate.

The motion was made by Wilson to request that Town Counsel attend the next public hearing to discuss the matter with the Board.

Member Degen said the Planning Board already granted special permits for four other carriers, it cannot call them back at this point in time. Member Eliot said she would like Town Counsel to meet with the Board and discuss the situation.

Member Perkins suggested that the Board leave the question open for Town Counsel on whether she should attend the hearing on not. The Board agreed.

Member Wilson agreed to amend his motion to request an opinion from Town Counsel on this matter. ***The motion was seconded and passed with Clements, Eliot, Perkins, and Wilson in favor; Barringer, Degen, and Lewis opposed.***

Member Wilson asked about the size of the microwave dish. Mr. Valeriani said, "four feet."

Member Wilson said he agrees that adequate screening must be provided for the abutter. Member Clements agreed.

Member Clements asked if Verizon would be able to provide coverage using other towers in the area. Mr. Bozkurtian said more towers would still be needed. Member Clements asked if Verizon is able to have equipment on the tower to

be constructed at the Town's Highway Department site, would it still need other towers. Mr. Valeriani said, "yes." Mr. Bozkurtian said they will look at locating on the tower at the Highway Department site to help meet the coverage goals along with the Gibbet Hill tower.

Member Degen asked if the microwave dish could be installed on another existing tower. Mr. Valeriani said, "no," the sites must be used to relay signals.

Member Degen asked if Verizon could flush mount one array, install the microwave dish on the Gibbet Hill tower, and locate the other equipment on the DEM fire tower. Mr. Valeriani said theoretically "yes," but practically "no." Mr. Valeriani said this is not a reasonable request – it is discriminatory.

Member Degen said he prefers flush-mounted equipment unless Verizon proves it cannot work.

Chairman Barringer also requested that Verizon submit evidence of relocating the microwave dish from the DEM tower to the Gibbet Hill tower.

Mr. Wilcox stated that he opposes the addition of the new equipment on the tower because it will have a negative visual impact on his views. The view of the tower will never be blocked by trees because the plantings will take years to grow.

Mr. Bozkurtian said Verizon chooses to locate on existing, approved towers. Collocation is consistent with and encouraged by the by-law.

The Board voted unanimously to continue the public hearing on November 13, 2003 at 8:30 PM.

RIVERCOURT RETAINING WALLS

The Board received a letter dated October 31, 2003 from Soughegan Valley Engineering, Inc. to Capstone Properties, Inc. regarding the Rivercourt Assisted Living Facility. The Building Inspector is satisfied that the matter is resolved. Capstone Properties installed bollards behind the wall as requested by the Planning Board. Member Degen noted that corrections to drainage flow are still needed.

The motion was made by Lewis that the above referenced letter from the structural engineer addresses its concerns regarding the stability of the retaining walls. However, the Board wants the record to show that the location of all the retaining walls and construction specifications are not shown on the approved site plan.

The motion was seconded and passed unanimously.

MEETING WITH MARK BOBROWSKI

The Board will hold a special meeting with consultant Mark Bobrowski on December 1, 2003 to review the proposed amendment to the Development Rate Limitation by-law.

Meeting adjourned at 11:30 PM

Respectfully submitted,

Michelle Collette
Planning Administrator

MC/lg

