

**GROTON PLANNING BOARD**  
**MARCH 17, 2005**  
**MINUTES**

Chairman Eliot called the meeting to order at 7:00 PM in the Town Hall  
Members present: Eliot, Barringer Clements, Degen, Lewis, Perkins and Wilson

**PUBLIC HEARING (con't) – SCENIC ROADS REGULATIONS**

*(Member Degen stepped down and did not participate.)*

The Board continued the public hearing to consider the proposed Scenic Roads Regulations. Tree Warden and Highway Surveyor Tom Delaney, GELD General Foreman Steve Moulton, and Historical Commission Member Alvin Collins were present.

Mr. Collins said the Historical Commission believes brush clearing, as well as tree removal, should be addressed by the regulations as proposed in the Historical Commission's original draft.

Member Lewis objected to the definition of "right-of-way" which states:

**"Right of Way"** shall mean the side line of a street or way, as determined by deeds and plans recorded at the Registry of Deeds, or a building line laid out under MGL C. 82, ~ 37; where no line is thus legally established, then a line parallel with and 20 feet distant from the center line of a traveled way."

Planning Administrator Michelle Collette said it is the same as the definition of "Street Line" in the Zoning By-law. Member Lewis said he objects to the Highway Department changing rights on private property. Planning Administrator Michelle Collette said this definition does not change the location of the right-of-way. Tree Warden Tom Delaney said the Highway Department only performs work within the public right-of-way. The proposed regulations will protect street trees within the public right-of-way.

Member Perkins said the Highway Department must be able to clear brush to improve sight distance. Chairman Eliot said clearing brush should not mutilate the remaining vegetation. Mr. Delaney said if the Historical Commission's standard is adopted, then the Highway Department will have to do all its work by hand.

GELD Foreman Steve Moulton said GELD follows the American Public Power Association and American Arborist guidelines. The linemen do minimum cutting to clear tree limbs away from electric lines to create a 6.5 ft clearance around the wires. GELD works with the Highway Department to keep trees away from the wires.

Member Perkins said the Board must balance public safety concerns with aesthetic issues. Mr. Delaney said his department tries to be as careful as possible. Mr. Moulton said GELD is very cautious, as well.

Mr. Collins said the proposal is not meant to tie the hands of Town departments, but asked Town departments not to leave a mess behind when the work is done.

Member Perkins asked if the Town has standards. Mr. Delaney said he tells his operators that he does not want his telephone to ring when they are done with the work.

Chairman Eliot asked members of the Board if the Scenic Road Regulations should govern brush clearing. The members all said, "no."

Member Barringer suggested that the maximum width of stonewall to be removed for a driveway cut should be widened from 16 ft to 24 ft to allow sufficient turning radius. The Board agreed.

Connie Sartini asked about the \$50.00 filing fee. Planning Administrator Michelle Collette said the fee will cover the cost of advertising the legal notice.

Harlan Fitch asked who will be responsible for administration of the by-law. The Board responded that the Tree Warden and Planning Board will have joint responsibility.

Member Perkins noted the importance of letting the public know about the new regulations when they are adopted.

The Board voted unanimously to continue the public hearing on April 14, 2005 at 7:30 PM.

### **PUBLIC HEARING – PROPOSED ZONING AMENDMENTS**

In accordance with the provisions of Chapter 40A, § 5, M. G. L., the Planning Board held a public hearing to consider the following proposed zoning amendments:

**ARTICLE** - To see if the Town will vote to amend Chapter 218, Zoning, of the Code of the Town of Groton, § 218-28 Development Rate Limitation, as required in § 218-28D Periodic Review, recommending that § 218-28 be retained until the 2010 Annual Town Meeting.

**ARTICLE** - To see if the Town will vote to amend Chapter 218, Zoning, of the Code of the Town of Groton, Section 218-23D Shared Driveways, by striking out the first sentence which reads as follows:

“A shared driveway shall not be adequate access except that, by special permit from the Planning Board, a shared driveway may be authorized to provide access to parking spaces on no more than two lots.”

And by inserting in its place the following sentences:

“A shared driveway shall not be adequate access except that, by special permit from the Planning Board, a shared driveway may be authorized to provide access to parking spaces on no more than three lots, provided that vehicular access to the buildable portion of each lot is possible from the street providing legal frontage to the lot, without reliance on the shared driveway.”

**ARTICLE** - To see if the Town will vote to amend the Zoning By-law as follows:

**Item 1.** By adding the following new Section 218-16D, entitled “Accessory Apartments”:

#### **Section 218-16D. Accessory Apartments**

**A. Purpose.** For the purpose of (a) providing small additional dwelling units to rent without adding to the number of buildings in the Town, or substantially altering the appearance of the Town, (b) providing alternative housing options; and (c) enabling owners of single family dwellings larger than required for their present needs to share space and the burdens of home ownership, the Board of Appeals may grant a special permit in accordance with the following requirements.

**B. Procedures.** Accessory apartments may be allowed on special permit, from the Board of Appeals, in accordance with the special permit process in this Zoning By-Law, as set forth in Section 218-32.1, and provided that each of the following additional criteria are met.

#### **C. Conditions.**

1. A plot plan of the existing dwelling unit and proposed accessory apartment shall be submitted to the Board of Appeals, showing the location of the building on the lot, the proposed accessory apartment, location of any septic system and required parking.
2. An affidavit shall be provided stating that one of the two dwelling units shall be occupied by the owner of the property, except for bona fide temporary absence;
3. Not more than one accessory apartment may be established on a lot. The accessory apartment shall not exceed 800 square feet in floor space and shall be located (a) in the principal residential structure on the

premises or (b) in a preexisting accessory structure;

4. The footprint of the structure in which the accessory apartment is to be located shall not be increased by more than 800 square feet and shall retain the appearance of a single-family structure. Any such increase in the footprint shall not exacerbate an existing nonconformity nor create a new nonconformity.

5. Sufficient and appropriate space for at least one (1) additional parking space shall be constructed by the owner to serve the accessory apartment. Said parking space shall be constructed of materials consistent with the existing driveway and, to prevent on-street parking, shall have vehicular access to a driveway, all as set forth in Section 218-23B.

6. The special permit shall expire after four (4) years; provided, however, that the special permit may be renewed by the Board of Appeals without a public hearing if the permittee submits an affidavit to the Board of Appeals prior to such expiration indicating that there has been no change in circumstances with regard to the accessory apartment;

7. No special permit shall be granted without a condition that the accessory apartment shall conform to the provisions of Title V of the State Sanitary Code, 310CMR 15.00.

8. Any accessory apartments intended for occupancy by a person with a disability shall be subject to the provisions of G.L. c. 40A, s. 3.

9. The Board of Appeals shall provide special consideration to an application for an accessory apartment which will be restricted to a rent affordable to a person or household of low or moderate income. Affordable to persons or families qualifying as low or moderate income shall mean affordable to persons in the Lowell metropolitan statistical area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning not more than 80% of the median income. The deed restriction for such unit shall be provided by the Board of Appeals.

**D. Special Regulations pertaining to Accessory Apartments.** The following special regulations shall apply to applications for accessory apartments:

**1. Flexible Developments authorized by special permit prior to May 5, 2003.** No accessory apartment shall be permitted in a Flexible Development authorized by special permit prior to May 5, 2003.

**2. Hammerhead Lot authorized by special permit pursuant to Section 281-23.1.** No accessory apartment shall be permitted in single family dwelling on a Hammerhead Lot authorized by special permit pursuant to Section 218-23.1.

**E. Decision.** Special permits for an accessory apartment may be granted by the Board of Appeals upon a finding that the construction and occupancy of the apartment will not be detrimental to the neighborhood in which the subject property is located and after consideration of the factors set forth in Section 218-32.1 of this Zoning By-Law.

**Item 2. To see if the Town will vote to amend the Zoning By-law by adding the following new definition to Section 218-4:**

ACCESSORY APARTMENT - An accessory dwelling with not more than one bedroom authorized by special permit pursuant to Section 218-16D.

Chairman Eliot called the public hearing to order. Clerk Degen read the notice published in the March 4 and 11, 2005 issues of *The Groton Herald*. The Board's consultant, Mark Bobrowski, and Building Inspector Michael Tusino were present.

Chairman Eliot read comments from the Water Department, the Board of Health, and the Building Inspector.

Mr. Tusino said he believes more work is needed on the by-law before it is presented to Town Meeting. He expressed his concerns about creating accessory apartments in detached accessory structures such as barns and garages. He said the proposed definition is very weak and offered an alternative definition.

The Board discussed at length the issue of whether or not apartments should be allowed in accessory structures provided the apartment is no greater than 800 sq ft as stated in the by-law. Mr. Tusino expressed concerns about enforcement as well as having two separate dwelling units on one lot.

Chairman Eliot asked if a duplex could be constructed on any conventional lot. Mr. Tusino said, "yes." Member Lewis noted that duplexes can also be constructed on non-conforming lots of record such as on lots in the Lost Lake area.

Chairman Eliot asked Mr. Bobrowski for his opinion. Mr. Bobrowski said since duplexes are allowed by-right on conventional lots, the Board may want to wait before it considers allowing 800 sq ft accessory apartment in detached structures. He noted that all accessory apartments must comply with the State Building Code.

Member Barringer expressed concern that accessory apartments would not be allowed on hammerhead lots or flexible development lots as stated in Item D of the proposed by-law. Mr. Bobrowski said the original special permit for the flexible development or hammerhead lot supersedes and must be modified for the whole development to allow an accessory apartment.

Mr. Tusino reiterated his opposition to allowing apartments in detached, accessory structures because many problems will result. He also requested that Item C2 regarding proof of residency for owner occupancy be deleted from the by-law. Member Barringer suggested using state tax code filings as proof of residency instead. Mr. Tusino asked how he would enforce such a provision. Mr. Bobrowski said as Building Inspector, he would ask for proof of residency. If someone questions the owner occupancy validity, they can file an appeal with the Zoning Board of Appeals.

Attorney Ray Lyons expressed his support for the proposed by-law which will provide additional housing options. He asked the Board to consider allowing accessory apartments by-right rather than by special permit. Mr. Lyons said accessory apartments should be allowed in flexible development subdivisions if there is a need to care for family members.

Member Degen said there are other housing options that will become available such as starter homes and houses restricted to people 55 and older.

Chairman Eliot noted that allowing an accessory apartment in a flexible development subdivision requires modifying the special permit for the entire development. Mr. Bobrowski agreed, adding that all homeowners must consent to modify the original special permit.

Mr. Lyons reiterated the need to provide such apartments for older people.

Member Lewis asked what would happen if these apartments are occupied by younger people who may send children to the schools. Chairman Eliot said the by-law includes a limit of 800 sq ft floor area for the accessory apartment. In fact, an older homeowner may want to move into the apartment and allow their adult children to live in the larger home to someone.

Robert Pine stated his support for the proposed by-law which will only apply to a few houses because duplexes are allowed by right on conventional lots. He said the by-law should not include an expiration date as stated in Item C6. Mortgage lenders may have a problem if the legality of the apartment expires in four years.

Selectman Virginia Wood spoke in favor of the proposed amendment which was cited in the Town's Affordable Housing Plan submitted to the Department of Housing and Community Development. She said there is an important

social need that should be addressed.

Chairman Eliot agreed that the proposed by-law will allow people to remain in Groton, remain in their own homes, or provide separate housing for adult children.

Selectman Winn Nordblom expressed his support for the proposed by-law. He agreed that the four year expiration is very unnecessary. He said the creation of accessory apartments should be subject to a special permit and not allowed by-right.

GMAC member Susan Horowitz said GMAC supports this proposed provision provided that Board of Health control is in effect. Mr. Bobrowski said he would add compliance with local Board of Health regulations to Item C7.

The Board agreed that amnesty provisions should be added to the by-law for a period of one year from date of adoption.

Member Clements said he did not want to go forward with the proposed by-law unless all the Building Inspector's concerns have been addressed. Member Lewis agreed.

Chairman Eliot said the special permit protects the Town and abutters. The Building Inspector can enforce the conditions of the special permit and provisions of the Zoning By-law. She stated that an accessory apartment should be allowed in an accessory structure because it would have less impact than constructing a large addition on an existing house. The accessory apartment is subject to a special permit, but a large addition is allowed by-right.

The Board discussed whether the accessory apartments should be attached or allowed in a detached structure. Members Degen, Lewis and Clements all said they should be attached.

The motion was made by Degen to require that accessory apartments be in attached, not detached structures. *The motion was seconded and passed with Barringer, Clements, Degen, Lewis, and Perkins in favor; Eliot and Wilson opposed.*

The Board voted unanimously to continue the public hearing on April 14, 2005 at 8:00 PM.

## **ANR PLANS**

**Gunderson, Farmers Row** - The Board considered the Approval Not Required plan submitted by Paul and Lee Ann Gunderson to create two large lots on Farmers Row. Attorney Robert Orsi represented the Gundersons at the meeting. The motion was made by Perkins to endorse as Approval Not Required the plan entitled, "Plan of Land in Groton, MA (Middlesex County)," prepared by Precision Land Surveying, dated March 10, 2005. *The motion was seconded and passed unanimously.*

**George Hayes, Maple Avenue** - The Board considered the Approval Not Required plan submitted by George Hayes to create two new lots on Maple Avenue. Attorney Ray Lyons and Surveyor David DeBay presented the plan.

Mr. Lyons said the plan shows only two new lots, not four as shown on the previous plan. Each lot has a minimum of 80,000 sq ft area, 225 ft frontage, with no wetlands. The adjoining land is owned by the Groton Conservation Trust. Mr. Lyons said the plan is entitled to ANR endorsement.

Member Perkins questioned whether the plan showed four lots including the lot with the existing house and the remaining land. Planning Administrator Michelle Collette read the definition for Major Residential Development which states:

"B. Definition. Major Residential Development shall mean the division or subdivision for residential purposes of any tract of land or adjacent tracts of land in common ownership as of October 1, 1997, which would result in any of the following:

1. An increase by six (6) or more lots above the number there two years earlier;
2. More than two (2) lots with driveway access onto a street existing at the time of lot creation, unless no such lot has a driveway location within 600 feet of the driveway location of another lot being created in the same division or subdivision of land;
3. More than one (1) lot with no potential site for construction of a dwelling any part of which would be less than 200 feet from a street existing at the time of the creation of such lot.

Mr. Lyons said Mr. Hayes would like to sell existing house and the two new lots shown on the plan. Chairman Eliot requested that the owner consider the future development of this parcel including the most appropriate location for the new road rather than creating ANR lots. Mr. Lyons said the plan is entitled to endorsement under State Statute.

Chairman Eliot read the comments from the Highway Surveyor requesting that this portion of Maple Avenue be paved. Mr. Lyons said Maple Avenue is a public way so an access adequacy determination is not required.

*(Member Wilson stepped down because Mr. Hayes plows his driveway.)*

The motion was made by Degen to determine that Maple Avenue, in its present condition, is not adequate to serve Lots 1 and 2 shown on the plan and that the applicant should work with the Board of Selectmen and Highway Surveyor to improve the road. The motion was seconded.

Surveyor David DeBay noted that the portion of Maple Avenue from Pepperell Road to three new lots created by a special permit in 1995 is not paved. Maple Avenue is a public way maintained by the Town. ***The motion passed with Barringer, Degen, Eliot, Lewis, and Perkins in favor; Clements opposed.***

The motion was made by Degen to endorse as Approval Not Required the plan entitled, "Plan of Land, Maple Street, Groton, Massachusetts, Prepared for George Hayes," prepared by Cornerstone Land Consultants, dated March 15, 2005, with the notation, "Such endorsement shall not be deemed to constitute any determination of compliance with the requirements of the Zoning Bylaw," and that the Board send a memorandum to the Building Inspector regarding access adequacy under §218-22A Frontage and §218-26.1 Major Residential Development. The ***The motion was seconded and passed with Barringer, Clements, Degen, Lewis, and Perkins in favor; Eliot opposed.***

**Robert Cushman, Wharton Row** – The Board considered the Approval Not Required plan submitted by Robert Cushman to create two new lots on Wharton Row. Attorney Ray Lyons represented the applicant at the meeting.

The Board received a report dated March 17, 2005 from Judith Nitsch Engineering, Inc. (JNEI) regarding the ANR plan and the Ames Meadow subdivision. Mr. Lyons requested an extension of the deadline to allow the surveyor time to add the requested information to the plan.

The Board voted unanimously to extend the deadline on the ANR plan to March 25, 2005 as requested by the applicant.

The Board voted unanimously to consider the plan at its meeting on March 24, 2005.

#### **SITE PLAN REVIEW – GROTON COLLISION**

The Board considered the site plan submitted by Robert Olson of Groton Collision. Attorney Ray Lyons represented the applicant at the meeting. Mr. Lyons requested a continuation so the Board would have an opportunity to walk the site. The applicant's engineer will meet with the Board's engineer next week.

The Board will walk the site on Saturday, March 19, and Thursday, March 24. The Board voted unanimously to continue site plan review on March 24, 2005 at 9:00 PM.

**COMMENTS TO SELECTMEN – CANTERBURY LANE**

The motion was made by Lewis to recommend that the Board of Selectmen and Town Meeting accept Canterbury Lane as a public way. The Board released the performance bond on July 1, 2004. The Board determined that the construction of ways and installation of municipal services in the subdivision have been fully and satisfactorily completed by the applicant in accordance with “Chapter 346 – Subdivision of Land” of the Code of the Town of Groton. *The motion was seconded and passed unanimously.*

**COMMENTS TO SELECTMEN – OAKRIDGE COMPREHENSIVE PERMIT**

The Board discussed the ZBA’s comprehensive permit for the Oakridge Manor Estates located on Route 119. Board members expressed several concerns about public safety issues that were not addressed such as the curb cut on Route 119.

Member Perkins, the Board’s liaison to the ZBA, said the comprehensive permit is based upon preliminary plans. The applicant must submit final plans to the ZBA prior to issuance of a building permit as specified in the comprehensive permit. The ZBA did include many of the conditions that the Planning Board requested.

Planning Administrator Michelle Collette said in the case, Planning Board of Hingham v. Hingham Campus, LLC the SJC ruled “that the planning board does not have standing to appeal from the grant of a comprehensive permit issued under G.L. c. 40B, § 21.”

Member Lewis said the Planning Board is only an advisor to the ZBA - the decision is in the ZBA’s hands.

Board of Health Chairman Susan Horowitz stated that the Board of Health was not satisfied with the water mounding calculations for the reserve sewage disposal system. She said they asked that the Selectmen request an opinion from Town Counsel on the matter.

After more detailed review of the Comprehensive Permit conditions, the motion was made by Lewis to send a memorandum to the Board of Selectmen asking the following questions:

1. Did the ZBA receive written comments or recommendations from the Town of Littleton since access to the site is in Littleton.
2. Is a Comprehensive Permit required from the Town of Littleton?

*The motion was seconded and passed unanimously.*

Meeting adjourned at 11:30 PM

Respectfully submitted,

Michelle Collette  
Planning Administrator