

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

Chairman Clements called the meeting to order at 7:30 PM in the Town Hall

Members present: Clements, Degen, Eliot, Lewis, and Perkins

Members absent: Barringer and Wilson

SITE PLAN REVIEW – OLIVER WRIGHT MEADOWS

The Board continued its review of the Oliver Wright Meadows site plan for 48 units, subject to a special permit granted by the Zoning Board of Appeals under §218-27B Subsidized Elderly Housing. Attorney Robert Collins was present.

Mr. Collins said the applicant would like to withdraw the site plan without prejudice to allow the design engineer time to meet with the Board's engineer and resolve the outstanding engineering.

Member Degen said he would prefer to wait until the plan is resubmitted before it is reviewed by the Board's engineer. Other members said the Board usually encourages applicants to withdraw and resubmit plans rather than granting lengthy extensions.

Mr. Collins said the Zoning Board of Appeals already granted a special permit under the provisions of Subsidized Elderly Housing for this project. Member Degen agreed that the engineering review of the special permit plan could take place.

The motion was made by Perkins to accept the withdrawal of the Oliver Wright Meadows site plan without prejudice. *The motion was seconded and passed with Clements, Degen, Lewis, and Perkins in favor; Eliot abstaining.*

AMANDA'S WAY – REVISED COVENANT

Attorney Robert Collins submitted a revised covenant for the Amanda's Way subdivision. The new covenant excludes the existing house on Lowell Road. The house will be converted to an affordable unit. In addition, the right to convey the entire plan, as permitted in the Subdivision Control Law, will be added to the covenant at the request of the lender.

The motion was made by Degen to accept the revised covenant when it is dated and signed James Patierno, applicant. *The motion was seconded and passed unanimously.*

BOSTON ROAD MARKETPLACE UPDATE

Planning Administrator Michelle Collette reported that Greg Rollo of Shaw's and Rob Harrison of CM&V Construction responded to the Board's letter about the lights being left on all night. The conditions of site plan approval required that only 10% of the lights be left on overnight. Mr. Harrison explained that the lights are on timers that are carefully monitored by an energy management company. The lights are turned down at 10:35 PM, after the store closes at 10:00 PM. The lights are turned on again from 6:00 to 7:30 AM. He offered to give any member of the Board a tour of the facility and explain how the lights are controlled. He said Shaw's wants to assure the Board that it will comply with all the conditions of the site plan approval.

SITE PLAN REVIEW – PETERBOROUGH OIL

The Board considered the site plan submitted by Peterborough Oil to renovate the existing gasoline station on Boston Road. Joseph Hart of Peterborough Oil, Attorney Robert Collins, and several abutters were present at the meeting.

Mr. Collins submitted his letter dated November 16, 2005 to the Board. He said the applicant is willing to reduce the size of the building by 200 sq ft, relocate the restrooms, and eliminate one of the dumpsters. He said this will result in less floor area. Therefore, fewer parking spaces are required. The number of parking spaces will be reduced from nine to eight. The vegetated buffer along the southwesterly property line could be conveyed to the abutter.

Member Lewis asked if conveying land to the abutter would increase the non-conformity. Mr. Collins said, "no," the

lot conforms to the dimensional requirements and the lot is larger today than it was in 1963 when zoning districts were adopted.

Mr. Collins said his letter suggested various conditions the Board could include in its approval of the site plan. He stated that the applicant would like to improve the site without putting an undue burden on the neighbors. The use has been non-conforming for 45 years so it probably will not go away. The applicant would like to make the site more attractive and less offensive.

Member Degen said Town Counsel Judith Cutler's letter dated November 10, 2005 makes it very clear that the proposed renovation constitutes an expansion of the non-conforming use which requires a special permit from the Zoning Board of Appeals. In addition, the proposed changes to the site will result in more hazardous conditions than exist today. The parking space for the disabled is in a dangerous location, the traffic flow is poor, and the planters will not control access to the site. Member Degen recommended that the applicant withdraw the site plan and submit a special permit application to the Zoning Board of Appeals.

Member Perkins said she also agreed with Town Counsel's opinion.

Member Eliot noted that the Building Inspector made his determination as Zoning Enforcement Officer. Other properties have been improved and are more attractive today. She agreed access and egress are major concerns with the proposed plan.

Abutter Ed Strachan said any expansion is incremental over the years. This is an opportunity to stop the incremental expansion of the non-conforming use at the site. He said the applicant is welcome to "spruce up" the outside of the building.

Abutter Michael Weinberg said the business is still expanding inside the building. He suggested that the applicant fix up the outside and not touch the interior because the business will expand if the interior is changed.

Mr. Collins said the Planning Board could ask the Building Inspector for another opinion and his decision could be appealed to the ZBA by the applicant or an abutter.

Member Eliot asked why the applicant is opposed to going before the ZBA. She said it is not up to the Planning Board to request another opinion from the Building Inspector. She said she would prefer to see the applicant apply for the special permit with the ZBA. Mr. Collins said he cannot submit a special permit application to the ZBA if the Building Inspection says a special permit is not required.

Member Perkins said Town Counsel's letter gave the Planning Board four options. She said she thinks the Board should follow Town Counsel's advice.

Member Degen noted that the Board is still in litigation in another matter with similar issues. He said the applicant should withdraw the site plan and submit an application for a special permit to the ZBA.

Mr. Collins said if the Board denies the site plan, then the applicant can appeal the denial on the issue of Town Counsel's letter versus the Building Inspector's opinion.

Member Degen responded that he believes the Board can deny the site plan for traffic flow and safety reasons.

Paula Weinberg asked if the abutters could ask the ZBA for its opinion rather than asking the Building Inspector. The Planning Board said, "no," the ZBA must make its determination only after holding a public hearing on an application.

Abutter Elizabeth Strachan asked about the law governing non-conforming uses. She said this application is trying to usurp the law by changing the use incrementally over time.

Mr. Collins said he would withdraw the application without prejudice and request another opinion from the Building

Inspector.

The motion was made by Lewis to accept the applicant's request to withdraw the Peterborough Oil site plan without prejudice. ***The motion was seconded and passed unanimously.***

GAMLIN PROPERTY PRELIMINARY PLAN

At the request of the applicant, the Board voted unanimously to continue its review of the Gamlin Property preliminary plan on December 22, 2005 at 7:30 PM.

MILL RUN PLAZA –GROTON RESIDENTIAL GARDENS

The Board discussed the Zoning Board of Appeals' public hearing and decision to modify the Groton Residential Gardens comprehensive permit.

Member Eliot said the Mill Run Plaza site plan should be modified as well because the shared drainage system is not working. She noted that John Schmid of JNEI told the ZBA that the design engineer used very liberal rather than conservative criteria in the design of the drainage system which serves both Mill Run Plaza and Groton Residential Gardens.

Member Degen asked how the ZBA could modify the Comprehensive Permit without an engineered plan. Member Perkins agreed. She added that this impacts the Mill Run Plaza site plan. If there is no plan stamped by a Registered Professional Engineer, the site plan does not meet the Planning Board's site plan review regulations.

Member Eliot asked if the Board can appeal the ZBA's decision to court. Planning Administrator Michelle Collette said the Planning Board has standing to appeal a decision under Chapter 40A, but the Board would have to ask Town Counsel if it has standing to appeal under Chapter 40B.

The motion was made by Perkins to request Town Counsel's opinion on whether the Board has standing to appeal the ZBA's decision to modify the Groton Residential Gardens comprehensive permit under Chapter 40B because the failed drainage system impacts Groton Residential Gardens, Mill Run Plaza and the relocation of Mill Street. ***The motion was seconded and passed unanimously.***

Member Degen noted that the applicant did not submit new engineering plans to the ZBA, the drainage system was designed to accommodate the 100-year storm and the October rain events were not 100-year storms.

The motion was made by Degen to ask the Building Inspector to issue a cease and desist on all work at Mill Run Plaza and Groton Residential Gardens because no plans have been submitted to the ZBA to modify the drainage system. The ZBA's decision is based upon a verbal agreement. After some discussion, Member Degen withdrew his motion.

The motion was made by Perkins to send a letter to Ryan Development requesting that the applicant submit a plan by November 28, 2005 to modify the Mill Run Plaza drainage system and that the plans be designed and stamped by a Registered Professional Engineer. If the applicant does not submit the plans, the Board may take further action. ***The motion was seconded and passed unanimously.***

The motion was made by Degen to ask the Board of Selectmen to meet with the Planning Board in executive session to discuss potential litigation regarding Mill Run Plaza and Groton Residential Gardens. ***The motion was seconded and passed unanimously.***

Meeting adjourned at 9:30 PM

Respectfully submitted,

Michelle Collette
Planning Administrator

