

**GROTON PLANNING BOARD
NOVEMBER 6, 2008
MINUTES**

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

Members present: Perkins, Barringer, Burke, Capes, Giger, and Wilson

Member absent: Hess

PUBLIC HEARING – MASSAPOAG HEIGHTS SPECIAL PERMIT

The Board held the continuation of the public hearing to consider the special permit application submitted by Patriot Real Estate to create a four lot subdivision off Island Pond Road. Attorney Ray Lyons represented the applicant at the hearing.

Attorney Lyons submitted a letter dated November 6, 2008 withdrawing the special permit application and stating his client's intent to continue with the preliminary plan review.

The motion was made by Barringer, seconded by Capes, to accept the withdrawal of the Massapoag Heights special permit application without prejudice. ***The motion passed unanimously.***

MEETING WITH TOWN MANAGER

Town Manager Mark Haddad introduced himself to the Board. He briefly described the new budget process that would begin at the November 13, 2008 department head meeting. The Board welcomed Mr. Haddad to the Town of Groton.

SITE PLAN REVIEW – COUNTRY BUTCHER, 68 BOSTON ROAD

The Board continued its review of the site plan submitted by Leonard Hester for the proposed Country Butcher Shop at 68 Boston Road. Mr. Hester and landowner James Cullen were present.

Chairman Perkins read the comments from the Nashoba Associated Boards of Health, the Water Department and the Sewer Department.

Member Barringer asked how many parking spaces are required. Mr. Cullen said at least 12. Mr. Hester added that there will be take-out coffee, sandwiches, and meals. There will not be any seats – it will be take-out only.

Member Giger said the sketch plan is sufficient for the proposed use, but any additional use of the office building on the same site will require a more detailed site plan.

Member Giger noted that cars should not back out onto Route 119. Section 218-23C(5)states:

Backing. The parking spaces in front of the building shall be so designed that no vehicle will be required to back into a public way to exit from a parking space.

Mr. Cullen said the parking spaces in front of the building are configured so vehicles must go forward and not back out.

The motion was made by Wilson, seconded by Barringer, to approve the site plan for Leonard Hester for the Country Butcher Shop to be located at 68 Boston Road. The Board understands that the butcher shop's use of the premises is limited to the first floor of the retail store building and does not include the basement except for storage. Parking spaces for the butcher shop were calculated based upon §218-23B (11) Other retail, single store, and §218-23B (14) Restaurant, take-out without seating.

The Board approved the site plan with the following conditions:

1. Access to the rear parking lot will be one way with the entrance on the westerly side of the retail building and the exit on the easterly side of the site.
2. Access, egress and traffic circulation must be reviewed and approved by the Fire Chief prior to the issuance of a building permit.
3. As required in §218-23C(5), the parking spaces in front of the building shall be configured so no vehicle will be required to back into a public way to exit from a parking space.
4. The dumpster shall be located near the easterly property line as shown on the plan submitted with the application. The dumpster shall be properly screened so that it is not visible from the public way or abutting properties.
5. If the snow banks exceed 2.5 feet near Route 119, snow shall be removed within 24 hours after plowing is finished so that sight distances on Route 119 are not obstructed.
6. The installation of any generator is subject to review and approval by the Fire Chief.
7. As offered by the applicant, the hours of operation will be between 6 AM and 7 PM unless additional hours are authorized by the Board of Selectmen.
8. No vehicles shall park within ten (10) ft of the fire hydrant on Boston Road at any time. [see 720 CMR 9.03.1(i)].
9. No vehicles shall park on Boston Road over night (between the hours of 11 PM and 6 AM).
10. The parking lot shall be maintained properly and kept free of litter.
11. Parking for the disabled and access to the building shall comply with the requirements of the Architectural Access Board Regulations, 521 CMR, and the Americans with Disabilities Act.
12. 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).
13. Lighting shall not intrude onto other properties or public ways as required in Section 218-25G(1)(h).

14. Public water is available at the site. Any alterations to the public water supply system shall conform to the specifications of the Groton Water Department.
15. Public sewer is available at the site. Any alterations to the public water supply system shall conform to the specifications of the Groton Sewer Department.
16. All signs must conform to the Sign By-Law, Chapter 196 of the Code of the Town of Groton. The Sign Committee must confirm that the sign conforms with the Sign By-law prior to the issuance of an occupancy permit.
17. 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.

The motion passed unanimously.

CRYSTAL SPRINGS ESTATES

The Board received a letter dated November 6, 2008 from Attorney Robert Collins requesting a continuation of the public hearing for Crystal Springs Estates to December 4, 2008. The Board voted unanimously to continue the hearing on December 4, 2008 at 7:30 PM.

MAJOR RESIDENTIAL DEVELOPMENT DECISION

The Board discussed the Wall Street Development v. the Planning Board of Westwood decision and the Memorandum to Municipal Clients entitled "New Appeals Court Decision Invalidating Major Residential Development Special Permit Requirement," from Town Counsel Judith Cutler of Kopelman and Paige. The Board will invite Attorney Cutler to a meeting to discuss the case and how §218-26.1 Major Residential Development should be amended.

WIND ENERGY CONVERSION FACILITIES

The Board reviewed the comments submitted by the Groton Electric Light Department (GELD) on the Wind Energy Conversion Facilities proposal. Member Barringer will meet with the GELD Commissioners on November 10, 2008.

MASSAPOAG HEIGHTS PRELIMINARY PLAN

The Board continued its review of the Massapoag Heights preliminary plan submitted by Patriot Real Estates Developers. Attorney Ray Lyons represented the applicant at the meeting. Several abutters were present.

Mr. Lyons said he withdrew the special permit application for Flexible Development and requested that the Board approve the preliminary conventional plan. He stated that the Flexible Development plan requires a zoning amendment. The conventional plan shows a 600 ft subdivision road serving two house lots. The property has 13 acres and 100 ft of frontage on Island Pond Road. Attorney Lyons submitted a letter requesting six waivers of the subdivision regulations.

Chairman Perkins asked Attorney Lyons to review the requested waivers. Mr. Lyons said his client needs more guidance at the preliminary plan stage prior to designing the definitive plan.

Member Giger said it is not clear that the hammerhead lot, approved by the Planning Board in 2002, could be subdivided as shown on the preliminary plan. Member Burke agreed that the hammerhead lot was created in 2002 as part of a common scheme that created Lots 1 & 2 and Lots 3 & 4. He said he believes the special permit granted in 2002 should be modified.

Member Wilson expressed concern that the proposed Residential Compound plan does not conform to the Subdivision Regulations. The preliminary plan does not meet the purposes of §381-8.1 Residential Compound provisions:

- A. Purpose. The purpose of this section is to preserve scenic vistas now available on Groton's roads, minimize the number of driveway cuts onto scenic roads, reduce the amount of mature trees removed during the development process, and maintain Groton's rural character. This section provides an option for the development of a parcel of land under an alternative design, called a "residential compound," where and only where the Board determines that such residential compound will promote development of the parcel to promote these objectives.

Attorney Robert Ancil said he is representing abutters Michael Zalewski, Joanne White, and Michael McCarthy. He submitted a letter dated November 5, 2008 regarding his clients' objections to the Massapoag Heights plan. Attorney Ancil noted that the Planning Board held six public hearings in 2002 prior to granting the special permits that created the Approval Not Required (ANR) lots and hammerhead lot. Lot 4, the site of the proposed subdivision, was approved as a hammerhead lot in 2002 with a shared driveway serving Lots 3 & 4. Attorney Ancil said his clients Michael Zalewski and Joanne White own Lot 3. He referenced the deed provisions and shared driveway agreement serving Lots 3 & 4. He said Lot 4 was approved as a hammerhead lot for one single-family dwelling. The proposed subdivision road interferes with his client's easement and driveway. Any change to the plan requires consent of all lot owners and mortgage holders under the provisions of the Subdivision Control Law MGL chapter 41, §81-W. Attorney Ancil said his clients do not consent to the proposed change.

Attorney Lyons responded that the 2002 plan was an Approval Not Required (ANR) plan, not a definitive subdivision plan so Chapter 41, §81-W is not applicable. The 2002 ANR plan created three conventional lots and one hammerhead lot. The previous developer could have subdivided this property in a variety of ways. The applicant, Patriot Real Estate Developers, purchased the hammerhead lot (Lot 4) and prefers not to exercise the special permit granted in 2002. The special permit for the shared driveway serving Lots 3 & 4 gives the Zalewski-Whites the right to use the driveway located on Lots 4 with cross easements for access, grading and utilities. Attorney Lyons said his client has the right to improve the shared driveway and construct a subdivision road as shown on the preliminary plan. The access will be improved and the maintenance costs will be reduced by the subdivision plan. In addition, the proposed subdivision plan protects 10 of the 13 acres as open space.

Member Capes noted that the 2002 special permit for the hammerhead lot was limited to one single-family dwelling.

Chairman Perkins suggested that the Board refer the matter to Town Counsel for an opinion.

Member Burke said he believes the 2002 special permits for the hammerhead lot and shared driveway have been exercised. A modification of those special permits with the consent of the owners is required for any change.

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Member Barringer asked if the ANR lots have been transferred to other owners. Attorney Lyons said, "yes."

Barry Pease, owner of Lot 3, described his decision-making process when he purchased his house. He said they moved to Groton because it was a nice, quiet, wooded area. He said a number of trees have been removed on nearby lots. He said he is very concerned about the impact of the proposed development on his well. In addition, Island Pond Road is a very dangerous, curvy road that cannot support more traffic.

Abutter Joanne White said she and her husband researched the property thoroughly prior to purchasing their home. The real estate brokers and others all assured them that Lot 4 was a hammerhead lot for one single-family house.

Sean Gaines said he actively participated in the 2002 public hearing process. The original application was for five lots, but the Planning Board reduced the number of lots to four. Three houses have been constructed on Lots 1, 2 and 3. The fourth house on Lot 4, the hammerhead lot, has not been constructed but there has been active deforestation of this lot. People bought their homes based upon the expectations of the 2002 special permits granted by the Planning Board.

Member Barringer said three lots are ANR lots and the fourth lot is a hammerhead lot. The Board must ask Town Counsel for an opinion on this matter.

Nancy Todd said she supports her neighbors and agrees with their concerns. The shared driveway issue is an important consideration. She said the proposed plan makes things worse and is more detrimental to the neighborhood.

Attorney Lyons requested the opportunity to submit his response in writing to the Board before the Board sends the information to Town Counsel. The Board agreed.

The motion was made by Barringer, seconded by Burke, to refer the matter to Town Counsel, along with the letter from Attorney Ancil and the letter from Attorney Lyons, for the legal feasibility of the proposed subdivision plan. ***The motion passed unanimously.***

Attorney Lyons requested that the Board postpone consideration of the preliminary plan to January.

The Board voted unanimously to continue the Massapoag Heights preliminary plan to January 15, 2009 at 7:30 PM.

MINUTES

The Board voted unanimously to approve the minutes of October 16, 2008.

Meeting adjourned at 9:30 PM

Respectfully submitted,

Michelle Collette
Town Planner