

**GROTON PLANNING BOARD  
JANUARY 15, 2009  
MINUTES**

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

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

Member absent: Barringer

**MASSAPOAG HEIGHTS PRELIMINARY PLAN**

The Board reviewed the Massapoag Heights preliminary plan submitted by Patriot Real Estate Developers to create two conventional lots off Island Pond Road. Attorney Ray Lyons represented the applicant at the meeting.

Attorney Lyons submitted a letter dated January 15, 2009 responding to Attorney Robert Ancill's letter dated November 5, 2008. Mr. Lyons said the abutter's easement is not a Planning Board issue – it is a matter for the Courts to decide. The proposed subdivision road is located on land owned by the applicant. It is highly unlikely that the easement on the abutter property would be used at all. The preliminary plan is a by-right subdivision plan that conforms to the Subdivision Regulations. The site is all uplands. One lot has more than five acres and the other lot has more than six acres.

Member Capes asked about lot frontage. Mr. Lyons said the parcel has 102 ft of frontage on Island Pond Road. The two lots will have frontage on the subdivision road.

Member Hess said the site has significant grade changes with a difference of 70 ft from the high point to the low point.

Member Burke asked if the topography shown on the plan was done before or after the recent excavation. Mr. Lyons said he was not sure, but he thinks it was done prior to the excavation. Member Burke said the applicant should submit a cut and fill analysis as the site exists today.

Chairman Perkins asked why the plan does not show the current topography as required in the Subdivision Regulations. Mr. Lyons said Surveyor Stan Dillis prepared the plan. He is not sure what information the surveyor used to prepare the plan.

Member Giger noted that the area near the stone wall is very steep. He said he is concerned that runoff and erosion from the proposed sewage disposal system may flow onto the abutter property. This area has been clear cut which resulted in erosion flowing onto the abutting land. Mr. Lyons said the sewage disposal system must meet all Board of Health requirements. The stone wall is still in place above the area of cut and fill.

Member Hess asked if this is the natural condition of the site. Chairman Perkins said the site has been altered. Member Hess said there is a very steep drop off. It is hard to tell what the existing conditions are from the grades shown on the plan. Mr. Lyons said they would address grading issues at the definitive plan stage.

Member Wilson asked who is responsible for the changes in the topography of the site. Mr. Lyons said the applicant excavated the site to prepare for construction of a single-family house on a hammerhead lot.

Member Wilson asked if the conventional plan shows two duplexes. Mr. Lyons said, "yes."

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Member Giger noted that gravel had been removed illegally from the site on July 4, 2008 by unknown parties. Mr. Lyons said his client is taking responsibility of the gravel removal.

Member Wilson asked what grades are shown on the plan. Mr. Lyons said he did not know.

Chairman Perkins said the definitive plan must include an explanation of all grade changes, the road profile, drainage system design and cut and fill calculations.

Attorney Robert Anctil, representing the abutters, said he submitted a letter dated November 5, 2008 and he is still waiting for an opinion from Town Counsel. He said there are minor submission requirements for preliminary plans. However, the special permit granted to create the four existing lots is an important issue. He said the developer does not have the right to use the shared drive as a subdivision road. In 2002, the Planning Board approved four lots including three ANR lots and one hammerhead lot rather than a total of five lots. The Board also granted special permits so the four lots could be served by two shared driveways. Mr. Anctil said he would like to hear from Town Counsel on the legal and zoning issues. He said the developer cannot use Lot 4 to create four additional dwelling units.

Members Giger, Perkins and Wilson all agreed that the Board must hear from Town Counsel on the previous special permits.

Member Capes said the legal question about the easements is a matter between the two parties, but the question about the special permits is a Planning Board issue. The Board agreed.

Member Burke said in 2002, two properties were combined for the ANR development. The original plan showed five lots – three ANR and two hammerhead lots. The Board approved four lots – three ANR including a special permit for one hammerhead lot (Lot 4). In addition, the Board granted two special permits for shared driveways serving Lots 1 and 2 and Lots 3 and 4. The special permits for the hammerhead lot and shared driveway serving Lots 3 and 4 affect the proposed development. The ANR plan was recorded at the Registry of Deeds, Lot 3 was sold to another party and the shared driveway was constructed. Therefore, the special permits have been exercised and the owners of Lot 3 must agree to vacate the special permit for the shared driveway. The special permit for the hammerhead lot was granted based upon a finding that Island Pond Road could only support one additional lot, not two.

Attorney Lyons said the special permit for the hammerhead lot was granted because the lot had less than 225 ft of frontage. When his client purchased the lot, he intended to build one house on the hammerhead lot. At the present time, he would prefer to create a by-right subdivision with two lots. The subdivision road will provide superior access to the owners of Lot 3.

Chairman Perkins said she would still like to hear from Town Counsel on the legal questions.

Mr. Anctil said the special permit for Lot 4 was based upon a finding that traffic impact would be minimized by the creation on one lot rather than two. Traffic and the condition of Island pond Road were important concerns at the time.

Member Burke said the special permit for the shared driveway serving Lots 3 and 4 is clear. The Board should make a decision on the proposed preliminary plan.

Mr. Lyons requested that the Board focus on the preliminary plan and not on title issues.

Member Giger said the Board was waiting for a rebuttal from Attorney Lyons in response to the letter dated November 5, 2008 from Attorney Anctil. Since the Board has not received a response to submit to Town Counsel, the Board must focus on the legal issues.

Member Wilson agreed that the Board should vote on the plan and send its decision to Town Counsel for an opinion.

Member Hess said he did not understand why the Board would vote on the plan prior to receiving a legal opinion...

Member Burke said this is not a definitive plan – it is a preliminary plan and not subject to appeal. The plan has very little information at this stage. The Board should provide the applicant with a list of concerns to be addressed at the definitive plan stage. He said the special permits for the shared driveway and hammerhead lot are the basis for the Board's decision. Lot 3 and Lot 4 share the cost of maintaining the driveway with a 50-50 split. Member Burke asked if the subdivision road is constructed, will Lot 3 have to pay 50% of the maintenance costs with the four owners on the subdivided Lot 4 sharing the remaining 50%.

Abutter Nancy Todd said she appreciates the Board's review of the record and it is concurrent with her recollections of the process.

Abutter Joanne White, owner of Lot 3, said she and her husband researched the lot prior to purchasing their house. They reviewed the special permits and based their decision on the fact that there would only be one house constructed on Lot 4.

Mr. Anctil noted that the original developer could have left Lot 4 as an unbuildable parcel at the time the other lots were created.

The motion was made by Burke, seconded by Giger, to DENY approval of the preliminary plan entitled, "Preliminary Subdivision Plan , Basic Number of Lots, Groton, Massachusetts, Applicant: Patriot Real Estate Developers, LLC," prepared by Ducharme & Dillis Civil Design Group, Inc., dated March 12, 2008. The proposed subdivision is located on Assessor's Map 246, Parcel 16-0 and Map 247-29.3, Island Pond Road.

The Planning Board voted to deny approval of the preliminary plan for the following reasons:

- A. In the opinion of the Planning Board, the applicant cannot unilaterally vacate the special permits granted by the Planning Board for the creation of Lot 4 as a hammerhead lot (see Special Permit PB 2002-01, effective on February 8, 2002) and for the use of a shared driveway serving Lots 3 & 4 (see Special Permit PB 2002-02, effective on February 8, 2002). Therefore, the proposed preliminary plan violates zoning because it is not consistent with said Special Permits.
- B. Additionally, the preliminary plan contradicts the original findings relied upon by the Planning Board when it granted the special permits:

Findings of Special Permit 2002-01:

The Planning Board made the following findings based upon the criteria set forth in Zoning By-Law §§ 218-23.1 and 218-32.1:

1. Social, economic and community needs: The proposed hammerhead lot will address the economic and community needs by providing the Town with only one hammerhead lot as opposed to the original two lots as shown on the above-referenced plan. This plan was modified to meet the concerns expressed by neighbors and Board members.
2. Traffic flow and safety: Traffic flow will be minimized by the creation of one single-family dwelling on a large lot, with a shared driveway, which will reduce the number of driveway cuts on a very difficult road.
3. Adequacy of utilities: Utilities will be provided through conventional methods with an on-site sewage disposal system and a private well.
4. Neighborhood character: The neighborhood character will be maintained by the creation of a hammerhead lot for single-family residential use. The neighborhood consists of single family homes.
5. Impacts on the environment: This plan represents a reduction by one home from the first plan submitted; less density will result in less environmental impact.
6. Fiscal impact on the Town: The fiscal impact to the Town will be less from one single-family house on five acres than from a conventional, two-acre development which may have placed an additional home on the site.
7. Section 218-23.1 Hammerhead Lots: The proposed hammerhead lot meets the minimum dimensional requirements (five acres area, 40 feet frontage, and 200 ft set back) for hammerhead lots. The reduction in frontage does not result in a hazardous concentration of egress points because the lot will share a driveway with Lot 3.

Findings of Special Permit 2002-02:

The Planning Board made the following findings based upon the criteria set forth in Zoning By-Law §§ 218-23D and 218-32.1:

1. Social, economic and community needs: The community will be better served by having fewer driveway cuts on Island Pond Road. It is a narrow windy road which can be difficult in poor weather.
2. Traffic flow and safety: Traffic flow and safety will be improved by having one driveway cut in a safer location instead of two driveway cuts on Island Pond Road. Sight distances are adequate for public safety and there will be some clearing along the easterly side of Island Pond Road to improve the view as well.
3. Adequacy of Utilities: Utilities will not be impacted by the proposed development.
4. Neighborhood character: There will be less impact on neighborhood character with fewer driveway cuts rather than individual driveways serving each lot. It will also reduce headlight glare into homes across the street.
5. Impacts on the environment: Fewer driveway cuts means less environmental impact on the land.

6. Fiscal impact on the Town: There will be no fiscal impact on the Town.

C. The applicant may submit an application to the Planning Board to modify Special Permits 2002-01 and 2002-02 with the consent and signatures of the owners of Lots 3 and 4.

The motion passed with Burke, Giger, Wilson and Perkins in favor; Capes and Hess opposed.

The motion was made by Wilson, seconded by Giger, to send the decision and supporting documentation to Town Counsel for review. ***The motion passed unanimously.***

#### **ACADEMY HILL AFFORDABLE UNITS**

The Board met with developer Bruce Wheeler and Attorney Cathy Netburn to discuss the schedule of affordable units to be constructed in the Academy Hill subdivision. Chairman Perkins read the letter dated January 17, 2008 from the Planning Board approving the schedule.

Attorney Netburn said they would like to record the condominium agreement prior to recoding the Local Initiative Program (LIP) agreement. The LIP agreement cannot be recorded until it is approved by the Department of Housing and Community Development (DHCD). Mr. Wheeler would like to sell one of the market-rate units soon. Mr. Wheeler agreed that the Groton Housing Authority would be designated as monitor.

The motion was made by Giger, seconded by Wilson, to approve the request of Academy Hill Realty Trust as detailed in the letter dated January 15, 2009 from Attorney Netburn with the condition that the LIP agreement be forwarded to the Planning Board by January 31, 2009. ***The motion passed unanimously.***

#### **APPLICATION FORMS**

The Board reviewed the revised application forms including the requirement that a Certificate of Authority be submitted by owners, other than individual owners, on all applications. The motion was made by Wilson, seconded by Giger, to approve the revisions to the application forms dated January 15, 2009. ***The motion passed unanimously.***

Meeting adjourned at 9:30 PM

Respectfully submitted,

Michelle Collette  
Town Planner