

Minutes Meeting of December 3, 2003 – Washington Green, Groton Gardens, Oak Ridge

Members Present: Stuart Schulman, Shaun Sullivan, Mark Mulligan, Chase Duffy, Dave Gandle

The Chairman reconvened the Washington Green hearing and continued it to 12/10/03 at 8:15 pm. The motion was seconded and passed unanimously.

The Chairman reconvened the Groton Gardens hearing.

Atty. Deschenes said that there is not a lot new regarding the application but the direction of project has been defined for 48 units. He said that there has been no okay for 60 units, even with the additional land. He said that the original plan has some changes. The engineer, Mr. Slager from Land Tech Inc. was introduced and is redesigning the drainage, which should be available next week. He said that the plan should be reviewed by the traffic consultant used by the PB for the commercial development. He said that all information should be available next week. He said that the drainage of site has not changed much and noted that the traffic review is fairly extensive. He said that the plan now integrates the Kelly's Lounge site, eliminating the Anthony Drive entrance, etc. He said that his client wants to keep the Kelly's property as part of the project even with only 48 units. He said that he is also proposing the realignment of Mill St. and the location of a small commercial building on the Kelly's site. He noted that the 48 units are in generally the same location as originally proposed, along with a 4000 square-foot one-story retail building with access onto Main St. He said that there will be one additional curb cut with adequate separation of the drive, the Mill St. realignment and the main drive of the project. He noted that the NEBS entrance is across from the retail store drive. He said that the retail structure will have similar architecture to the 40B project. He asked for patience to produce the revised drainage calculations, etc. and to wait for feedback from the peer review. He said that he thinks the redesign will help with earlier design problems. He said that the proposal does not overburden the Kelly's Lounge site.

The Chairman agreed that the proposal is better, but noted that the sewer issue continues to be relevant because there is still no capacity and a town meeting vote is required to extend line. He noted that there is also an negative letter from the Con. Comm.

Atty Deschenes said that the Con. Comm denial is on appeal and felt that there would be a resolution soon. He noted that the only building proposed is in the buffer zone and not in the wetlands proper.

Mrs. Duffy asked whether the town's ACEC status is relevant.

Atty. Deschenes said that he does not think so.

Mrs. Duffy asked where the play areas would be.

Atty. Deschenes said that there is more room because more land is no available. He said that there is an option to remove a building to satisfy the Con. Comm. that would substantially free up even more land for a play area.

The Chairman said that he is not comfortable issuing a permit without sewer capacity.

Atty. Bobrowski said that there could be a standard condition and any changes would require a visit before the ZBA.

The Chairman noted concern about possible changes.

Atty. Deschenes said that there are sewer districting and capacity issues the need to be overcome. He said that otherwise the hook up can.

The Chairman asked what other boards are involved in the Mill Street realignment.

Atty. Bobrowski noted that there has been both a BOS and town meeting vote for the realignment. He suggested using Mr. Hebert of SF and T since he has knowledge of the area and can keep the plan consistent with State intent.

Atty. Deschenes agreed to use Mr. Hebert.

Mr. Degen, PB said that Mr. Walker withdrew the proposal after getting negative feedback from the PB, which is why this 40B is before the Board now. He said that the State has not reviewed the proposal. He said that the BOS, Fire Chief and Police Chief want Mill St. to be realigned. He said that the abandonment of the old Mill St. also needs a town meeting vote. He felt that Mr. Walker would get additional land with the abandonment and make the viable but he said that the project should not go forward without Mr. Hebert's review. He noted that the road issue is outside of the 40B and a separate process.

Atty. Bobrowski said that it is offshore but not unheard of with 40Bs, and is in fact consistent. He said that the Board is able to condition all other necessary approvals with the permit. He said that the timing can be limited but since the town wants the realignment, it is worth exploring with Mr. Hebert.

Mrs. Duffy noted that architecture is very important.

The Chairman said that it will be done.

Ms. Kneeland, abutter, said that she thought one plan realigned Mill Street with NEBS but felt that this plan was now back to the grocery store plan.

Mr. Degen said that the PB wanted a four-way intersection with NEBS, which is why the applicant's plan was disapproved.

Ms. Kneeland said that the realignment should be across from NEBS. She said that currently the land is split and felt Mr. Walker will gain land.

Discussion ensued regarding escrow account and agent for the applicant said that \$3000 more will be added.

Ms. Kneeland said that Anthony Drive was never taken into consideration in traffic counts. She said that there is often a traffic cue onto Rt. 119 and felt that a shortened Mill St. could make access from Anthony Drive more difficult.

Discussion ensued regarding retail vs. restaurant.

Atty. Bobrowski said that the Board could condition retail as subject to PB site plan review.

Mr. Degen said that the Board should require traffic counts for NEBS since the retail is opposite and creates a much different scenario. He asked whether the retail access is shared as a secondary access with the 40B.

Atty. Deschenes said that the access would be shared.

Mr. Degen said that the PB did not want a shared access with the originally proposed restaurant and day care, so he felt that the Board could not just okay the proposal without further study.

Atty. Bobrowski said the Board could condition the retail use into the permit.

The Board asked that sidewalks be constructed all the way through the project.

Atty. Deschenes said that the Board could require that the secondary access be used only for emergency access.

Atty. Bobrowski suggested for the next meeting that the applicant should submit a revised pro forma taking the cost of this into consideration if Mr. Hebert thinks the relocation is conceptually good,

Discussion ensued regarding when to reschedule.

The hearing was continued to Monday, January 26, 2004 at 8:00 pm.

The Chairman read the Con. Com. denial into the record.

Craig Alman, Con. Com. said that 100% of the buffer zone would be disturbed. He said that due to the proximity of the project to wetlands, adequate protection has not been allowed for. He said that it is most likely a certified vernal pool, and noted that tree clearing will allow the pool to dry up more quickly. He said that there is no way to confirm whether the proposed infiltration gallery will function as proposed.

The Chairman noted that the status is being appealed.

Mr. Alman said that the State is visiting the site at 1:00 pm on 12/10/03.

A motion was made to add Gary Hebert as a consultant. The motion was seconded and passed unanimously. A motion for continuation seconded and passed unanimously.

Chairman reconvened the Oak Ridge hearing.

Atty. Deschenes said that he wanted to discuss the traffic report, which he wants to forward to JNEI. He said that his engineer took into account the proposed development at 4 corners and two potential residential projects in the area: Rocky Hill and Academy Hill.

Mr. Degen said that both are either denied or substantially reduced.

Atty. Deschenes said that they wanted a broad view of potential development for both the traffic counts and speed study. He said that the conclusions were good news: there are adequate site distances in both directions relative to the actual travel speeds. He said that the project would generate 324 trips per day, which is below the minimal threshold to warrant a signal. He said that the project would increase traffic by one vehicle every three minutes during rush hour.

The Chairman noted concern regarding the cumulative effect.

Atty. Bobrowski said that an engineer does not measure the level of service of the road, but with the intersection.

Atty. Deschenes said that there should be no material impacts expected from the project and noted that the only mitigation suggested is a stop sign.

The Chairman noted that he is negatively impressed by the huge queue of cars waiting to get onto 119. He said that every project adds a series of drips.

Kristen McEvoy, abutter, asked whether the Board is continuing with peer review for the traffic study and noted that this would effect the pro forma.

The Chairman noted that it is the applicant's money and not the towns.

Atty. Bobrowski said that it is a miniscule amount to add to the pro forma.

Mr. Degen asked about the JNEI peer review and suggested that because Gary Hebert did the Shaw's peer review, he is very knowledgeable of the area.

Atty. Deschenes said that they are not realigning roads here and noted that Doug Prentiss can do the review in a timely fashion.

The Board moved to allow Gary Hebert to review and present on 1/26/03. The motion was seconded and passed unanimously. Of note: if Mr. Hebert is unavailable, the Board will use Doug Prentiss.

Leslie Lathrop, abutter, asked where the figure of 27 trips comes from. She noted concern regarding safety, and said that she has trouble believing that the elderly can turn easily off and onto Rt. 119 with the traffic issues.

Atty. Bobrowski said that a good traffic engineer would handle the safety issues.

Atty. Deschenes said that their traffic consultants looked at safety.

Mr. Degen said that Mr. Hebert would address site line issues.

Atty. Deschenes said that that would be looked at with the traffic report.

Ms. McEvoy noted that it takes 35 minutes to get to the high school, and asked about the affordable units.

Atty. Deschenes said that all units are age restricted. He said that the time it takes to get to the high school is not an issue for a project other than for marketing. He noted concerned regarding feedback from Sandy Brock, or lack thereof. He said that he is meeting with the Fire Chief on the 12/10/03.

The Chairman read the Water Dept. memo into the record.

Discussion ensued regarding where the water lines will come from. Atty. Deschenes said that there are three possibilities that all involve Groton Water.

Mr. McEvoy asked what are proposals are.

Atty. Deschenes said that he should check with the water department for plans.

Mattbob said that they are not ready to disclose plan before negotiations with private parties are complete.

Atty. Bobrowski said that the public hearing would not be closed without this information.

Atty. Deschenes said that there are several conservation issues, such as vernal pools, etc. He said that they have filed a notice of intent and noted that they are intending to fill just under 1000 sq. feet of resource area. He said that they are required to get access into the project and noted that otherwise all construction is outside of the 100-foot buffer zone. He said that there would be a little bit of drainage within the 50-foot buffer zone. He said that if there could be an option to move outside of the resource area, the option would be exercised, but that option is not available. Natural Heritage has given a number for the certified vernal pool, but the boundary is not established. He said that he, as the proponent, can bring forth evidence to establish boundaries. He said that they will provide evidence that where the entrance will be located is not a vernal pool. He noted that vernal pools do not have an outlet. He said that this plan provides a two-foot box outlet which provides drainage. He said that they are asking experts to come out to allow DEP to make a determination. He said that they are looking at little stretch very carefully and are talking to Pat Huckery, etc. He said that if this does not prove the boundary of the pool, his clients will consider bringing in a third party consultant. He said that this will be proven as part of the Conservation hearings. He said that there is a difference between filling in a true vernal pool and altering the habitat of a vernal pool. He said that they are proposing a 3 to 1 recreation of that area, and noted that the existing house will be removed, which will allow that area to become habitat for the vernal pool. He said that this is the only access to the property, and noted that under limited project status this would be given some preference if this is the only access. He noted that an application was filed today with the Con. Comm. today.

Mr. Clemens, Con. Comm., asked whether the Board had correspondence from Div. Fisheries, etc. He said that the vernal pool occupies all of wetland A, and stressed that it was good that a Notice of Intent has been filed. He said that there should be clarification of the vernal before more money is spent. He suggested a wildlife study. He said that Littleton has a public water supply near the site and wondered whether this project will affect supply.

Mr. Slager, Land tech, noted that a portion of site is within Zone II, which triggers one BOH regulation, regarding limited nitrogen sensitivity. He said that the site is below the threshold.

Chairman asked for a letter from Littleton regarding the water supply.

Mr. Slager said that Nashoba Boards of Health would review the project.

Mr. Degen said that 440 gallons per unit per acre are allowed. He said that at 25 x 40,000, this is 11,000 gallons per day.

Discussion ensued regarding thresholds. The applicant said that the figures are below groundwater discharge levels.

Atty. Deschenes said that only nitrogen loading is relevant and the numbers are below the threshold. He said that the regulations are met in a worse case scenario.

Atty. Bobrowski asked Mr. Clemens what the vernal pool certification means to the Con. Comm. process.

Mr. Clemens said that it is very difficult to get permission to fill a vernal pool, even if it is the only access to the site.

Mr. Slager said that he cannot disagree but noted two distinguishing aspects. He said that no boundaries are specified or delineated. He said that there is likely to be a 3rd party consultant. He said that their specialists said that the actual pool is not actually being later, but only the habitat and that is being replicated at a 3 to 1 ration.

Atty. Bobrowski asked when the Con. Comm. would be done with the review.

Mr. Clemens said that standards are very strict where endangered species are involved. He said that a net benefit needs to be shown.

Atty. Deschenes said that he does not know if endangered species are there. He said that the only certainty is that certified vernal pool is on the site.

Ms. McEvoy asked whether the Con. Comm. would work with National Heritage.

Atty. Deschenes said that the Con. Comm. should hire a wildlife specialist.

Atty. Bobrowski asked what the Board wants to do. He said the ZBA jurisdiction is local concerns: public safety, environmental, etc. He said that there is a concurrent jurisdiction with the Con. Comm. He said that this situation is potential deal breaker, because so unusual.

The Board noted its reliance on other boards to help make these determinations, and wants to hear from the Con. Comm.

Mr. Clemens noted that local by-laws are stricter than state and figures that the applicant will be asking for a waiver.

Mr. Sullivan asked for clarification regarding whether the habitat is protected outside of the vernal pool issue.

Of note: rare species protection is different from vernal pool protection.

Mr. Clemens noted that Groton has many rare species.

Atty. Bobrowski said that the Board can hear from the traffic on 1/26/04 but otherwise he wants Con. Comm. resolution.

Mr. Clemens said that a wildlife study cannot be done until spring.

Atty. Deschenes feels that it is premature to look for a decision on Con. Comm. issues tonight. He said that he wants to keep the process moving regarding traffic and architectural design.

Ms. McEvoy said that the proposed detention basin is in her backyard. She said that she feels that the vernal pool issue could affect the location of the basin. She then asked for clarification regarding what a detention basin is.

Mr. Slager said that it is a hole in the ground which road runoff goes into. He said that it controls the flow rate from impervious services, etc. He said that all water flows back to Rt. 119, away from the vernal pool.

Ms. McEvoy said that it will flow into the vernal pool. She asked how the engineer review works regarding the vernal pool issue.

Mr. Slager said that the water dissipates over a 24 to 48 hour period.

Discussion ensued regarding wetland replication.

Ms. McEvoy wants open space with no leeching fields or septic systems on the back of the property.

Mr. Slager said the he will work with the BOH regarding moving the fields.

Mr. Degen said that a Con, Comm. review of the Notice of Intent will result in a wildlife study being done. He said that this would require an analysis of vernal pools in March and April. He said that the results of study may not be available until late April or May and noted that this all costs money. He said that the applicant could be spending upwards of \$1000/hour, which could move the pro forma numbers up. He said that if the applicant cannot get by Con. Comm., there is nowhere to go with the ZBA.

Atty. Bobrowski said that only big items move the pro forma. He said that these items would not move the numbers that much.

Mr. Degen asked how there could be a pro forma without integrated numbers.

Atty. Bobrowski said that the Board would analyze another more detailed pro forma.

Atty. Deschenes said that they are risking their money against whether this a show stopper. He said that it is not worth to sit and do nothing for 1/2 year.

Discussion ensued regarding time vs. money, etc.

The hearing was continued to 1/26/04 at 7:55 pm. A motion was made, seconded and passed unanimously.

The hearing adjourned 10: 30 pm.