

Minutes Meeting of November 16, 2005 – Groton Gardens, Rutledge, Parker-Roach, May, 40B Rules

Members Present: Stuart Schulman, Jay Prager, Chase Duffy, Mark Mulligan, Robert Cadle

The Chairman convened the Groton Garden modification hearing by reading the legal notice.

Doug Deschene and Robert Walker were present. Mr. Walker noted, for the record, that the proposal is not a major material change. He said that they are minor engineering revisions that could be handled through a meeting that is not a public hearing. He said that there were drainage problems in October, due to a series of events: six inches of rain, then two, and then four inches for a total of 12. He said that a lot of water coming off of Rt. 119 made it into the basin. He noted that when the site is completed, sidewalks will be constructed so that no water from Rt. 119 will enter the basin. He said that that, in combination with the additional sediment, caused the problem. He stressed that the basin was constructed properly. He said that the design was reviewed by all engineers and constructed as such. He said that his position is that once the site construction is completed, the drainage system will work properly. He said that voluntary steps are being taken, the first of which is to increase the elevation of the basin to 219 feet. He said that there will be a 75,000 cubic feet capacity, which is more than double. He said that they are installing a culvert under the emergency access onto Anthony Drive which should eliminate the flooding that was a pre-existing condition. He said that connecting detention overflow into MassHighway drainage is much more problematic and he doesn't know what this entails. He said that he will commit to the first two and wants to complete the first two to show that the system both should and does work. He stressed that the problems were based on a series of events out of his control.

John Schmid, JNEI, said that he met with the applicant last week and noted that the berm is at 217 to 218 at this point. He said that this is why it discharged into Anthony Drive. He suggested that it is good to build up the berm but it will bubble up and discharge onto Rt. 119 at 218 feet. He stressed that the overflow pipe is mandatory and that MassHighway will allow a tie in if the system is designed for a 100 year flood storm. He said that unusual conditions work and noted that it is in both applicant's and the town's best interest to make sure the pipe is constructed for a MassHighway tie in.

Discussion ensued regarding whether raising the berm would make post construction conditions more like preconstruction conditions.

Mr. Schmid said that he can't talk about pre vs. post conditions but noted that there are a couple of options for the MassHighway tie in, either through the same side of the street vs. the other side. He said that it generally takes three to four months to get a permit from MassHighway and can Mr. Walker can decide the most cost effective route. He said that he gives credit to the applicant that he is putting in an overflow pipe to deal with the Anthony Drive flooding. He said that because the pipe will go in at 215 it won't address all the flooding but will get the water before it floods any

homes. He said that the town could also take some action on Anthony Drive to change the water flow.

Mr. Prager asked what will happen if MassHighway denies a tie-in.

Mr. Schmid said that the applicant would be stuck.

Mr. Walker said the water would just run down Rt. 119.

Mr. Schmid stressed that the drainage system needs to be maintained and silt removed from the retention basin. He said that they are not getting proper infiltration levels.

Atty. Deschenes said that it is standard operating procedure that all silt will be removed in any event.

The Chairman read a memo from the PB into the record.

Mr. Walker said that numbers one and two of the PB memo will be done. He said that Mill Run Plaza is not part of GRG.

Mr. Schmid said that GRG pays the price if Mill Run doesn't maintain the basin properly.

Atty. Deschenes said that Mill Run is legally bound to maintain the basin.

Discussed ensued regarding how the projects are or are not connected.

Of note: There are similar maintenance projects for Mill Run and GRG.

Mr. Walker said that they are 40% through a 40 million dollar construction project and stressed that the basin will work when completed. He noted that the curbing, drains, etc. not completed and that all water came into the lowest point of the project. He said that there are no issues with Mill Run and there will be no issues when GRG is completed.

The Chairman asked about numbers four and five of the PB memo.

Atty. Deschenes said that there is no evidence that the project causing flooding. He said that the tie in and additional drain will alleviate the situation but it is not fair to expect Mr. Walker to fix historical problems that the project is not causing.

Mrs. Collette noted that as parts of the oversight were designated to several officials, adding that she was approved as Earth Removal Inspector. She said that on 10/15/05 she was checking on several sites in town and the retention basin at GRG was overflowing and causing flooding at 10 Anthony

Drive. She said that she is entering the 10/17/05 memo and photos of the site into the record. She stressed that we are all here to cooperate and solve the problem. She said that we have been over the before but Mill Run and GRG share the final retention basin and thus are connected. She noted that the PB memo deals with any standard stormwater management system and stressed that the critical part is making sure that the system functions as designed. She said that if the applicant doesn't do overflow tie in onto Rt.119 than the design is unacceptable.

Mr. Walker said that he didn't create any more water than nature sent. He said that he is helping the situation by collecting water.

Mrs. Duffy noted that there is much more impervious cover and that disturbs the flow.

Mr. Walker said that that's why he provided catch basins, etc.

Mr. Prager asked why he would object to putting in the drainage overflow pipe.

Mr. Walker said that he was increasing the size of the basin and that is good enough.

Mr. Schmid said that putting engineering issues aside, this is a many millions of dollar project. He said that he does not understand why the applicant objects to 20 to 25 thousand dollar pipe that will fix the problem. He said that Landtech was liberal with the design to maximize the build out of the site. He said that that way the system only works under optimal conditions that may be optimal when Mr. Walker walks away but not six months later. He stressed that under that design matrix there is no room for error and reiterated that 25 grand will fix the problem.

Atty. Deschenes said that increasing the size of the basin should fix the problem.

Mr. Schmid said that that is only a quick fix.

The Chairman said that it seems to make sense to do it now, before there is more tar, etc.

Mr. Walker said he is not being disrespectful but felt the Town should contribute to the cost of the overflow pipe.

Mr. Schmid said that it is more to put in the overflow pipe rather than raising the basin.

The Chairman said that that will save some money.

Mr. Prager said that Mr. Walker can't make a statement that won't be a problem in the future. He said that the basin should be designed to a worst case scenario and not for a best case scenario.

The Chairman said that he wants JNEI's suggestion.

Mr. Walker said that he wants JNEI to write a letter in support of the MassHighway connection.

Mr. Schmid said that a 218 elevation for the berm with a permit for tie-in is better than 219 without, but if the application is rejected by MassHighway, then a 219 elevation of the berm must suffice.

Atty. Deschenes said that they will apply with a recommendation letter from JNEI to connect to a basin on the same side of Rt. 119. He said that if the permit from MassHighway is obtained then the berm will be built to 218, and if no permit, then to 219. He stressed that the system was built correctly and just didn't function properly. He noted that these are all voluntary actions.

The Chairman said that all he cares about is that situation is mitigated and is not interested in finger pointing.

Mr. Walker said that his reputation is damaged and stressed that the record needs to reflect the proper language. He said that he will make the system comply to a 200 year storm if necessary and submitted what he termed as inflammatory quotes in the newspaper into the record.

Carrie Kneeland, for the record, said that the residents of 17 Anthony Drive, filed a complaint regarding the flooding.

The Chairman read the Livangood (17 Anthony Drive) memo into the record.

Ms. Kneeland said that water is flowing across Anthony Drive. She said that she thought that they needed to comply with drainage issues during construction.

Mr. Schmid said that they do and discussion ensued regarding what this entailed.

Ray Capes, 10 Anthony Drive, asked where the water goes if there are silt problems with the retention basin.

Mr. Schmid said that it will drain but it takes two to three times longer.

Mr. Capes noted that the water in the basin sits above his property and expressed concern that the water table has been altered.

Mr. Schmid said that he can't tell whether or how the water table is affected and suggested putting in a monitoring well (or keeping the one that was put in there).

Mr. Capes said that he has no pre comparison.

Mrs. Collette said that the contractor was very responsive when the emergency first occurred and also when it reoccurred one week later. She stressed that he is very good and very available but the Town is looking for a long term solution so that when the construction is completed the future homeowners and town don't have to deal with overflows and flooding.

Anna Elliot asked how the engineering details would be different if conservation calculations were used, rather than liberal ones.

Mr. Schmid said that they would have slower infiltration rates and thus would need a larger catch basin. He noted that it can be hard to make a more stringent review when a 40B is at issue.

The Chairman asked whether the ZBA has any say in the degree of liberty taken with engineering design issues.

Ms. Kneeland noted that there are two strong instances that the State looks at a 40B: drainage and wetlands.

The Board moved to endorse an agreement with the applicant that the berm of retention basin #3 will be built up to 219 if no permit is obtained from MasssHighway for a tie in to their storm water management system. The berm will be at 218 with the permit for an overflow pipe tie in and a 12 inch culvert will be constructed under the Anthony Drive emergency access.

The motion was seconded and passed unanimously.

The public hearing was closed.

The Chairman convened the Rutledge hearing by reading the Legal Notice.

The Rutledges were present, stating that the Building Inspector wants a set of stairs to provide a secondary access that do not meet the 15 foot setback requirement.

Discussion ensued regarding how to create a second egress. The applicant noted that the property used to be a business and is now a residence.

Mr. Rutledge said that the necessity for a tight tank and the steep topography to the rear of the property is why a second egress is required. He said that they could have had a second egress on the first floor but that would not be conform. He noted that the existing deck is conforming but stairs the wouldn't be.

Discussion ensued regarding how the variance affects abutting properties.

Mr. Rutledge said the whole neighborhood is non-conforming.

Mr. Nowak, abutter, said he doesn't understand how the deck can be conforming and the stairs not.

Mr. Prager said that this is due to the angle of the lot line.

Mr. Nowak asked whether this affected the boundary line.

The Board said no and stressed that no precedent would be set.

The Board moved to grant a variance from setback to allow a set of stairs to be constructed within 5 feet of the rear boundary, to allow for a second egress to the Rutledges at 16 Townsend Rd.

The motion was seconded and passed unanimously.

The Chairman convened the Parker-Roach hearing by reading the Legal Notice.

The applicant requested to withdraw without prejudice.

The Board moved to allow the withdrawal and the motion was seconded and passed unanimously.

The Chairman convened the May hearing by reading the Legal Notice.

Atty. Ray Lyons, along with Stan Dillis, engineer, presented a plan, noting that an order of conditions from the Con. Comm. has been received. Atty. Lyons said that the only area that can be built on is to the rear and noted that the proposal is an increase in the non-conforming nature of the property/dwelling. He said that the lot is 10,000 square feet and very long and skinny, and noted that the applicant owns into the lake but that part of the land is not usable. He said that they are seeking a variance from setback and a special permit to increase the roofline within a 25 foot setback. He said that the roof is currently 28 ft high and will be increasing to 32 feet high. He noted that the eave on the front of the house is staying the same but the pitch increases. He said that the current roof is very flat and that the increased pitch will have better snow shedding, etc. He noted that the increase in the height is mostly on the road side.

Of note: the dotted line on the plan is a retaining wall.

Mr. Dillis said that there will be a peaked roof, which from the pond shows some windows and gables. He said that the habitable space on the second floor will increase due to an increase in the roof peak.

Of note: the rear of the house will be close to the water line and thus the rear setback requirement is needed.

Atty. Lyons said that the shoreline is historically the high water mark as created by the dam. He noted that variances from front and rear setbacks are being asked for, as well as a special permit to make the roof four feet higher.

David Watkins asked whether this view is going to affect abutters and noted that he has a cottage right across the lake.

Atty. Lyons said that when looking down from the road one does not see the roof. He stressed that the only view blocked is dirt and road behind the house.

The Chairman suggested a site walk.

Mrs. Duffy said that if the roof is no higher than the road, she is okay with it.

Mr. Dillis said that if the Board has look than there will be a comfort level.

An abutter asked about parking.

Mr. Dillis said that the existing parking area will be used.

The hearing was continued to 12/14/05 at 7 pm.

A site walk was scheduled on 12/10/05 at 9 am.

The motion was seconded and passed unanimously.

The Chairman reconvened the 40b rules and regs hearing.

Discussion ensued regarding whether to implement an asset test.

The administrator will ask about asset tests.

The Board moved and seconded to adopt the rules as discussed on 11/2/05, with typos being worked on by Mrs. Duffy at a later date. The motion was seconded and passed unanimously.

The meeting adjourned at 9:05 pm.