

COHASSET PLANNING BOARD MINUTES

DATE: WEDNESDAY, FEBRUARY 17, 2010
TIME: 7:00 P.M.
PLACE: COHASSET TOWN HALL – BASEMENT MEETING ROOM
41 HIGHLAND AVENUE, COHASSET, MA 02025

Board Members Present:

Alfred S. Moore, Jr. - Chairman
Stuart W. Ivimey, Vice Chair
Jean Healey-Dippold, Clerk
Charles A. Samuelson
Clark H. Brewer

Board Members Absent:

Recording Secretary Present:

Jo-Ann M. Pilczak, Planning Board Administrator

Meeting called to order at: 7:05 P.M.

7:00 P.M. 8 JAMES LANE PUBLIC HEARING TO CONSIDER SOUTH COASTAL DEVELOPMENT GROUP, LLC'S REQUEST THAT THE PLANNING BOARD RECONSIDER ITS DECEMBER 16, 2009 DENIAL OF THEIR APPLICATION FOR A SPECIAL PERMIT FOR "THE RESIDENCES AT COHASSET VILLAGE," AND TO INSTEAD, ALLOW SOUTH COASTAL DEVELOPMENT GROUP LLC TO WITHDRAW THEIR APPLICATION WITHOUT PREJUDICE.

Member Healey Dippold read public hearing advertisement. In attendance for applicant: Paul Cleary, South Coastal Development; Attorney Gordon Hurd. In attendance for Planning Board: Town Counsel Hucksam. Member Moore recapped for the record that Board had encouraged the applicant to consider withdrawing without prejudice until such time that they were ready to proceed and make progress with this filing. Applicant decided not to do that and to proceed. However, there was outstanding information that had been repeatedly requested, overdue engineering deposits, etc. and the motion was made to deny the project. Town Counsel advised that the Board can consider the applicant's request to allow him to withdraw without prejudice. Attorney Hurd acknowledged that the applicant did "not cross T's and dot I's" or, address all the questions raised in peer review and plan review. Hurd also had the sense that there was a feeling that the Board was doing the homework for the applicant, which, he acknowledged, is simply not the Board's responsibility. The only things to change are things like: rainwater harvesting; to properly incorporate the peer review standards that were raised during the course of the initial application; and to incorporate aspects of smart housing in terms of computers etc. Hurd suggests that to do this, it makes more sense to pull the application back, come back in when all changes are complete and, properly submit a plan.

Alix White, 25 James Lane: asked how this can be reopened if the project was denied for several reasons. Town Counsel did not know of any legal reason why it could not be reopened for the very limited purpose of considering the applicant's request to allow the applicant to withdraw without prejudice. If withdrawn, the applicant would have to completely reapply and start over from the beginning – including fees.

David Bigley, 25 James Lane: There was very specific opportunity given to the applicant to withdraw without prejudice before the denial was issued – is that correct? Member Moore confirmed this is correct.

Member Ivimey: Feels this is absurd – the applicant had many bites at the apple and was before the Board for many months without any forward movement in this project. Ivimey is very distressed over the concept that the Board makes a decision in the interest of seeing projects progress and to see that abutters will know what will happen in their neighborhood and the Board was firm in their decision and then be asked to consider the concept of turning the clock back because a lawyer writes a letter. The Board has made the decision and should move on.

Member Healey-Dippold: Shares same sentiments as Ivimey. Fears that yo-yoing will send message that yo-yoing is alright and the whole point is that it is not OK. It is important that when Board says something it has some effect.

Member Samuelson: Agrees with Ivimey about the lawyer part. Wondered if this is the time to raise the level of abstraction – is it the position of this Board to support development of any sort in Town? Member Ivimey replied that that was the whole reason why the Village Business District Bylaw was rewritten – to encourage development and rebuilding of the Village. Ivimey added that the Board's desire to see redevelopment can be seen in the medical building approved by the Board and built by Dr. Pompeo in the Village but, the Pompeo building moved along smartly, complimented the Downtown area and followed the bylaw and the rules. This question (applicant's

request to be allowed to withdraw without prejudice) doesn't have anything to do with whether the Board wants to encourage development or not.

Member Brewer: First, allowing the applicant to withdraw without prejudice sends a tone to other developers that if they have a project that stumbles along the way with Planning Board review and it makes sense for them to withdraw without prejudice then they can do it. The Planning Board wants to see a good project here. If the Board does not allow the Board to withdraw without prejudice, the applicant could come before the Board with a substantially different project at any time and not wait the two years. But if he tries to bring the same project to the Board with the denial in place, the Board could not consider it. (Town Counsel confirmed this is correct).

Attorney Hurd: reiterated that, in his opinion, the applicant put too much of the burden on the wrong side of the table – on the Board and its engineers, whereas it is the applicant's job to bring finished plans to the Board. He admits the applicant did not lead the project and relied too much on the Planning Board. He too questions why the applicant did not just withdraw without prejudice because the applicant has the peer review and there are things to add – at which point he would schedule a meeting with someone to talk about the issues that go into these changes and this plan to show that something very green and user friendly can be done in a Town – if they can do it, they can point to this success to show what they did in Cohasset. They now want to withdraw so they can make the changes and have a second chance to build new plans that address the issues the Board asked them to address a year ago and create what the Board wants in terms of the bylaw. If withdrawal is the only way to make sure those issues are addressed, then, the applicant is looking for a second chance to do that.

Town Counsel: (in response to Member Samuelson's inquiry about regardless of whether they are allowed to withdraw or if the denial remains in place, for the applicant to return, the entire process must be begun again with public hearings, etc., just as if it were a new application) explained that if the Board, in its discretion, allowed the applicant to withdraw without prejudice, the whole repetitive petition issue would completely go away.

Member Moore: torn on the issue and notes that this is a difficult situation and site. If the Board voted to deny the request to withdraw without prejudice and let the denial stand, the applicant would be barred for coming back with this same application for two years. But the applicant could come back tomorrow with a different downtown use for this site. Moore is not at all convinced that the plan the Board originally saw was the plan they wanted to see in this area, but is concerned that through an action at this meeting, the Board could force a situation where the applicant comes back with another plan which might not be good for the Town. If they are going to come back with an application, Moore would not want to tie their hands in such a way that an alternative might be eliminated. In its zeal to hold feet to the fire, the Board could create a situation that they would later regret.

Member Ivimey: whether Board changes their position or not, the applicant could do everything that Moore suggested could or could not be done. All options would still be open – they could still come back and reapply with a redesigned residential that shows a substantial and material change. Board should not send message that Board does not have a spine when it comes to their decisions.

Paul Sullivan, So. Coastal Development: If option to deny without prejudice is denied, it almost eliminates the Board can still vote down a plan they are not happy with. It is to the Town's benefit to have a residential development rather than a commercial development and, a commercial development is allowed under the current zoning. They are not sure what they are going to resubmit or when, but they would like to have all their options open for residential – being allowed to withdraw would allow them to do this.

MOTION: By Member Ivimey to close the public hearing.

SECOND: Member Samuelson

VOTE: 5 – 0 MOTION CARRIES

MOTION: By Member Samuelson to allow the applicant to withdraw without prejudice.

SECOND: Member Brewer

Discussion: Member Ivimey fails to see how reversing the denial and losing credibility with the community and with developers in that the Board means what they say and say what they mean is outweighed by any ability for the applicant to submit any other plan that is not a photocopy of what is on the table today. The Board should go to bat for the taxpayers – the Planning Board cannot be spineless and should not demonstrate a lack of backbone.

VOTE: 3 opposed - 2 in favor MOTION DOES NOT CARRY

APPLICANT'S REQUEST TO BE ALLOWED TO WITHDRAW WITHOUT PREJUDICE IS DENIED.

Member Moore noted that he agreed with much of what Member Ivimey said, but also agrees strongly that the Board may be potentially trying their hands.

7:25 P.M. SWIM CENTER, BALLFIELDS AND ADJACENT PROPERTIES (NORTH MAIN ST. & SOHIER ST.) FORM - A APPLICATION. Filed on February 9, 2010.

In attendance to represent this application: Glenn Pratt, Water Commissioner and Brendan Sullivan, Cavanaro Consulting.

This Form A application is the beginning of the site for the new Senior Center. Town meeting gave broad latitude (via 3 articles) to the BOS and Water Commission to change land to create a new lot for the Senior Center. Council of Elder Affairs entered memorandum of understanding with the Cohasset Swimming & Recreation Trust so the Form A application is joint application as each owner has land which is being changed, including the Water Dept. The proposed changes: create frontage for the swim center and make the swim center lot conforming; keep the Water Dept. land (with abandoned drinking water wells) separate rather than part of Town parcel; give the proposed Senior Center land frontage with a No. Main St. address; and, create a conforming lot within the sewer district. Will require a number of easements for parking and utilities. Member Ivimey asked if the lot lines near the handicapped access are too close to the batting cages at the ball field. Building Commissioner Egan answered that that only applies to residential land so it is not an issue. Member Ivimey also noted that while this is a joint application of the Town of Cohasset and the Cohasset Swimming & Recreation Trust, the Cohasset Swimming & Recreation Trust had not signed the application. As this Form A does affect their land and their rights, they should be on the application as an applicant and should have signed the application.

MOTION: By Member Ivimey to approve and endorse this Form A application, but the Planning Board Office will hold the endorsed mylar until a representative of the Cohasset Swimming & Recreation Trust (Swim Center) signs the original application on file in the Town Clerk's Office.

SECOND: Member Healey Dippold

VOTE: 5 - 0 MOTION CARRIES

7:40 P.M. VOTE TO SIGN SIGNATURE PAGE – CCI ENERGY REMAND DECISION

Town Counsel advised that a vote to sign the signature page is not necessary.

Signature page signed by Members Moore, Ivimey, Samuelson and Brewer. Member Healey Dippold did not participate in the Remand Decision vote and therefore did not sign the signature page.

7:45 P.M. 380/400 CJC HWY. (STOP & SHOP PLAZA) SITE PLAN REVIEW - CONTINUED PUBLIC HEARING. APPL: COHASSET ASSOCIATES. Filed on December 22, 2009

In attendance to represent application: Jack O'Leary, Merrill Associates; Attorney Charles Humphreys.

O'Leary explained that an architect has been brought on board. They have been working on site plan, addressing comments received from other departments and CDI. Just finished new site plans but were not able to obtain copies in time for meeting – will submit new plans to Planning Board office tomorrow. Changes include:

- Stormwater: have done some of the test pits required in the new regulations and some of the permeability analysis to back up the original design that was submitted. Results are better than they had hoped in the initial design – the infiltration system is sited properly and the infiltration rates are better than the initial design. The system seems to work very well. Redid the calculations using higher rainfall amounts as suggested by Modzelewski and took a look at the other factors as suggested in Modzelewski's comments. They have produced a new report which they believe addresses all those comments and brings it into compliance with new regulations.
- Changes to parking: reserved spaces from previous plans and Planning Board approvals seem to have caused some confusion and have been omitted from these new plans - they were never really necessary for the current filing, but had been on the previous record plans and they thought they should be shown. But, by removing them, it eliminates some of the confusion and, demonstrates that there will be no activity within the immediate vicinity of the wetland and the buffer zone. This makes everything more straight forward and makes the parking calculations easier to read. Total building area for all 3 buildings is 105,492 SF. Sheet 19 explains the parking calculations. Using bylaw calculation of 1 space per 200 SF, the total number of parking spaces in the existing two buildings is 360 spaces and there are a total of 542 existing spaces – so, under the current bylaw, there are excess spaces on the site. The proposed 30,000 SF building requires 135 spaces or, a total of 495 for all three buildings so there is still an excess of 47 spaces. Building Inspector Egan noted that restaurant space requires 1 parking space for every 3 seats. O'Leary will revisit and see if that makes any difference in their calculations. Member Ivimey suggests that the more onerous requirement be used because the use can change. In summary, the total number of spaces on the site under existing conditions is 542 spaces, but the proposed building is being sited such that it eliminates 79 spaces and, they added 37 spaces for a total of 500 spaces. Member Moore noted that the number of spaces taken up during the Christmas season to sell Christmas trees (which was allowed because of all the excess spaces) might

be impacted by this. Member Ivimey suggests that (he has never seen the entire lot totally full) the Board consider not requiring all the parking spaces to reduce the asphalt – put spaces in reserve and plant green.

Attorney Humphreys noted that there is more communication needed with the CFD to make sure they incorporate all the CFD comments. Applicant would like to discuss traffic flow with the CFD as well. Need to know turning radius of existing CFD equipment. Plans will be adjusted accordingly to incorporate Capt. Trask's comments.

Jim Kelleher, Axiom, has filed with the Design Review Board and meeting will be scheduled soon.

Traffic study and report completed - to be delivered soon. Addressed the effect of the additional traffic in the left hand turn lane coming southbound on Rt. 3A into the Plaza. Modzelewski thought this was an issue to address. Manual counts and analysis have been done. Modzelewski will forward the traffic study to his traffic consultant once he receives it. Modzelewski noted that most traffic calculations go basically by square footage and that this proposal is increasing the existing square footage by 30% - which one can expect to have an impact.

Member Moore added that, although not operational at this time, there is an approved drive thru (used by the former Dunkin Donuts) on the back of the Phase II building, which they should make sure will still flow correctly with the traffic flow of the proposed building. O'Leary also wants to meet with Capt. Trask to go over his comments and suggestions regarding traffic flow and the main entrance driveway.

Modzelewski also addressed the zoning impervious calculation that has to be done with only half of the wetlands considered. Modzelewski commented that they have to be sure that this is vetted thoroughly. O'Leary commented that this is a little difficult to review because the site is actually in two different zoning districts, the exact location of the line between the two is a little vague. O'Leary is hoping that this can be clarified when they meet with the Conservation Commission. Modzelewski explained to the Board that there is a watershed protection district and the map that was drawn for it does not match the definition of it in the bylaw. This impacts the wetlands and its location in the more restrictive zone which would then impact some of the parking and construction in that area. Modzelewski thinks this should be addressed to ConComm and Stormwater Management. Modzelewski proposes to hire Norfolk Ram as consultants so there is consistency in review and information.

Member Brewer – plantings: commented on the straight line of white pines in the rear used as screening element – noted that the previous plantings were more varied and staggered and wondered if more of existing vegetation can be maintained and asked what options have been considered for this area. He added that the 4' – 6' white pines are fast growing, but will not look good for very long. Questioned if the soil absorption area has to be flat and how it can be tied into the screening for the residential district. Humphreys mentioned that the only way to stop the internal run out of the slope is a retaining wall. Humphreys also noted that the pine trees were the result of an agreement with Jane Cook – not done for any permitting or legal purpose. They will look at this more closely.

Member Brewer – fire lane: asked if the fire lane is required. Humphreys replied that it is required to allow access to all sides of building. Brewer noted that he has designed buildings without access on all four sides – there is a calculation for sprinkler fire protection and area that takes into account whether there has to be access on all four sides. This design has created a 300' long, 12' high retaining wall alley – is there some way to berm up above the grade of the first floor slab to reduce this alley. Applicant will work with Jim Kelleher and Capt. Trask to see if the retaining wall can be lowered. Brewer would like them to determine if its required and look at other options that might also make the soil absorption better. Member Samuelson suggested adding a railing on top of the wall. Member Moore noted the retaining wall behind Shaw's which is actually fairly attractive. Modzelewski requested that footprints of proposed homes at Cook Estate be added to plans so Board can see how close they are.

Member Ivimey noted that they need to review noise – from compressors and freezers etc.

Member Ivimey suggested that the emphasis be put on "green".

MOTION: By Member Brewer to continue this public hearing to March 24, 2010 at 7:30 P.M.

SECOND: Member Ivimey

VOTE: 5 – 0 MOTION CARRIES

8:30 P.M. ZBA RECOMMENDATIONS

• **68A NICHOLS ROAD SPECIAL PERMIT APPLICATION, APPL: CAVANARO CONSULTING, OWNERS; EDWARD AND JULIE RODGERS** - Carmen Hudson, Cavanaro Consulting was in attendance to represent this application. Hudson explained that the applicant has applied for a special permit because the lot area of 45,381 SF is less than the required 60,000 SF in the Residence C District. The lot is additionally non-conforming in that it only has 20.88' of frontage as opposed to the required 50' and the existing rear setback is only 16'± feet as opposed to the required 30'. The lot does conform in terms of lot width, front setback, side setback and building height. The house has a shared driveway and, cannot be seen other than from Little Harbor.

The owners intend to reconstruct a single family dwelling on this lot. The footprint for the proposed structure is almost the same (somewhat more narrow) than the existing. There is a slight increase in square footage of the residence, but it is under the threshold of the Large Home Review. The existing structure is also non-conforming by virtue of the 16'± rear setback. The proposed structure will actually decrease this rear setback non-conformity.

MOTION: By Member Ivimey to recommend that the ZBA approve this special permit application as the proposed plans actually decrease the non-conformity.

SECOND: Member Brewer

VOTE: 5 – 0 MOTION CARRIES

• **379 ATLANTIC AVE., SPECIAL PERMIT APPLICATION, APPL: ATTORNEY CHARLES HUMPHREYS, OWNER: ELLEN GIBBONS.** Attorney Charles Humphreys in attendance to represent this application. Humphreys explained that this property had received a building permit and an abutter filed an appeal of building permit to ZBA stating that it needed a special permit. In 1985, this property was totally compliant with zoning, have 55,989± SF. Required lot size for Residence C was changed in 1985 from 30,000 SF to 60,000 SF. However, 5.3.2.b states that if the lot conformed with zoning at the time of the bylaw, the new area regulations do not apply. Humphreys position therefore is that they do not apply. There is a doll house/playhouse/shed that exists on the lot which is 5' off the property line. The ZBA stated that the entire lot does not comply because of the doll house/playhouse/shed – which is a very strict read – Humphreys contends that only the residence is considered when talking about improvements, not the doll house/playhouse/shed. Humphreys also explained that 8.7.1 is very different than the Bjorklund case and the Branson case because those cases involved their particular bylaw. In the meantime, Ms. Gibbons wants to go for the special permit so she can build their home which is why the Planning Board is reviewing this special permit application. Humphreys added that the house is consistent with the neighborhood – there are many large houses on much smaller lots that have been improved over the years and, it cannot legally cause any harm when you comply with the dimensional requirements. Member Ivimey concerned that the ZBA opinion stated that a special permit is required in the circumstance that there is a substantial enlargement to the existing building and therefore questioned what “substantial” means – is it 10%, 5%, 2%? Humphreys explained that 8.7.1 - “an existing non-conforming building or structure (and this is non-conforming because it, in fact, sits on a non-conforming lot) maybe extended, altered or enlarged as long as the extension, alteration or enlargement complies in all respects with the area regulations as set forth in Section 5.3” – is the Cohasset test and that is what building permits have been issued on. Further, Humphreys explained that if, by 8.7.2, a special permit was required for every change to a non-conforming structure, Section 8.7.1 is not even needed and, under ZBA’s current interpretation of bylaw, every change would need a special permit.

MOTION: By Member Ivimey to recommend that the ZBA approve this special permit application.

SECOND: Member Samuelson

VOTE: 5 – 0 MOTION CARRIES

9:15 P.M. ADMINISTRATION

• **VOTE TO APPROVE FEBRUARY 3, 2010 MEETING MINUTES**

MOTION: By Member Brewer to approve the February 3, 2010 minutes

SECOND: Member Samuelson

VOTE: 4 – 0 MOTION CARRIES (Member Ivimey abstained – did not have chance to review)

• **CONTINUED DISCUSSION – MAPC TECHNICAL ASSISTANCE** – Not really discussed – Brewer will forward the information to the Board for discussion at next meeting.

• **DISCUSS - PROJECT UPDATES** - Wait until economy improves. Hold on this

• **NOMINATE COHASSET VILLAGE FOR APA APRIL, 2011 CONFERENCE “GREAT PLACE IN MASSACHUSETTS”** – Board thought this would best be referred to and handled by the EDC.

MOTION: By Member Ivimey to adjourn at 9:30 P.M.

SECOND: Member Samuelson

VOTE: 5 – 0 MOTION CARRIES

NEXT REGULAR MEETING: WEDNESDAY, MARCH 3, 2010 AT 7:00 P.M.

MINUTES APPROVED: JEAN HEALEY DIPPOLD

DATE: MARCH 3, 2010