

COHASSET PLANNING BOARD MINUTES

DATE: WEDNESDAY, OCTOBER 6, 2010
TIME: 7:00 PM
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
Clark H. Brewer
Charles A. Samuelson
William Hannon, Associate Member

Board Members Absent:

Recording Secretary Present:

Jo-Ann M. Pilczak, Administrator

Meeting called to order at: 7:05

7:05 P.M. PUBLIC COMMENT (10 MINUTES MAXIMUM) – No public comment

Assoc. Member Bill Hannon did have other suggestions for bringing activity to Cohasset – Drama Festival, Movie Festival at Town Hall, Jazz Festival, Shakespeare Festivals. Smaller, focused use of Town Hall for festivals.

7:15 P.M. INFORMAL DISCUSSION, MATT SHANLEY, MANOR WAY CIRCLE – New owners Matt

Shanley and Rhonda Kallman and, Attorney Richard Henderson in attendance. Henderson noted that Ch. 81 § 81W provides the right to modify and amend an approved subdivision and that the Planning Board has the right to waive the Subdivision Rules & Regulations if it is appropriate with respect to a proposed project. The new owners of this property plan to substantially reduce former owner David Calhoun's approved subdivision plans. They plan to reside in the existing house (former Flint estate) and build on only two other house lots and place the majority of the land in a conservation restriction. This would require a modification that would allow: the reduction in the number of lots; the creation of a hammerhead rather than a cul-de-sac; and, the involvement of a substantial conservation restriction. Calhoun's subdivision started to the west of Cedarmere and the new owners would ask that the Planning Board look at this project in two phases: first, just the development of the two proposed houses – including the improvement of the old right of way for two houses only with the old right of way having the status of a subdivision way as opposed to a common drive. Since this subdivision way will serve only two homes, the new owner will ask for a waiver of some of the subdivision roadway requirements (but not to the point of being below common driveway standards.); and, second, until such time as the Cedarmere land is developed by someone, the new owner will ask that the Board allow the new owner to develop the subdivision way to common driveway standards until such time as the Cedarmere land to the east is developed. Henderson gave opinion that the Planning Board has the right to approve such modifications and waivers and that the new owner is before the Board with a legally permissible plan. Shanley explained that he plans to eliminate the five lots and lot 6. He explained that the previous owner cut down specimen trees, built a huge cul-de-sac and installed retention ponds which seem to have created water issues on abutting land that did not have water issues prior to the cul-de-sac and retention ponds. Shanley plans to remove the cul-de-sac, return the grade to its original state, remove the retention ponds and install rain gardens instead and, work towards returning the landscape and plantings to the original natural state that was a show piece. The entire site is a 15 acre parcel. Lot 6 is 9.7 acres of wooded and wet land which should not be used for building and will have a conservation restriction placed on it so it can never be build upon. The two houses will each be on 1.5+ acre lots. The new owner has the 100 Pond St. leaching field under agreement – all the houses will have the right to use the common leaching field. The owner would like Castle Rd. to remain his driveway. The two new houses will have Manor Way addresses. Overall, the Board informally agreed that a less heavily engineered development to the site is a good approach and, an improvement to the existing approved plan.

Member Moore advised that the new owners involve John Modzelewski and Town Counsel Rich Hucksam from the very beginning so this moves along smoothly and, that they may have to visit conservation relative to the new Stormwater Management bylaw.

7:30 P.M. 380/400 CJC HWY. (STOP & SHOP PLAZA) SITE PLAN REVIEW - CONT'D

DELIBERATION APPL: COHASSET ASSOCIATES. Filed on Dec. 22, 2009 – In attendance for applicant: Attorney Charles Humphreys. In attendance for Planning Board: Town Counsel Richard Hucksam; Town Engineer John Modzelewski.

John Modzelewski summarized points he thought the Board should consider (following his October 6, 2010 memo in Planning Board files):

1. **ZONE A DELINEATION:** Modzelewski noted that Merrill Associates indicated that the Water Dept. concurs that this property is not in Zone A, but, Modzelewski noted that nothing to this effect had been submitted in writing. Building Inspector Egan added that he defers to the Water Dept. and Norfolk Ram's determination that the Zone A delineation is not of concern with this property. Member Moore agrees. Modzelewski noted that the Board could condition that a letter must be received from the Water Dept.
2. **INCREASE IN IMPERVIOUS COVERAGE:** Member Moore suggested that if the Planning Board approves this filing with conditions, the Board is essentially saying it is alright to increase the impervious coverage which is tacit to recommending to the ZBA that it should grant approval of the increase in coverage. Moore is troubled by this and Modzelewski agreed with Moore's assessment that this is a tacit recommendation to the ZBA. Member Healey Dippold agreed. Member Samuelson did not agree – he felt it is within the Planning Board purview to approve with a condition that the applicant must obtain all other required approvals and permits. Town Counsel suggested that if the Planning Board does not want to convey this suggestion to the ZBA, it could clarify in the decision that Planning Board approval does not constitute a recommendation to other Boards or, could condition that ZBA approval is required. Member Brewer noted that there are technical solutions that could reduce the % impervious and he does not understand why the applicant didn't try to do this to meet the impervious requirement. Town Counsel advised that the Board has to make its decision on the criteria of the Site Plan Review bylaw and the fear of approval equaling a recommendation to the ZBA is not part of the Site Plan bylaw approval. If the plan shows a straight out zoning violation, the plan could be denied but this does not seem to be one of those situations. Humphreys noted that if the Board approves this plan, they are finding that the system of drainage and collection of runoff water is consistent with required engineering standards. The ZBA decides the special permit criteria which is a different review. If the applicant does not receive the special permit from the ZBA, they will add some pervious. Humphreys noted that the applicant stated early in the public hearings that they were at 59% and would be seeking relief and wished the Board had addressed their concern in more detail earlier. Humphreys added that the Board could condition that the applicant will have to reduce the impervious if they do not receive a special permit from the ZBA. Member Ivimey is concerned with approving this with a violation of the bylaw – approval of a site plan should mean that the site plan complies with the bylaw and it is inappropriate to list a condition that essentially says “but it doesn't comply with the bylaw” – the function of conditions is to mitigate the adverse impact of a site plan that complies with the site plan bylaws. Approving a site plan that the Board knows does not comply with the bylaws essentially lets the ZBA make a change that will make a site plan comply with the bylaws – this is tortured procedure. Member Samuelson asked – if the Board denies this application partially based on the impervious issue, and the applicant receives relief from the ZBA, can the applicant reapply to the Planning Board? Town Counsel advised that he would have to determine if repetitive petition applies or if the ZBA relief could be grounds for appeal. Humphreys is concerned that it would not be a substantially different plan and would therefore be considered a repetitive petition. Member Brewer believes this is a good project that uses good quality design and materials, adds more retail space in a district where the Town wants retail, knits together the two existing buildings that are not now connected. Member Healey Dippold agrees and believes that conditioning that the applicant must reduce the impervious coverage to maintain the existing % impervious if they do not receive relief from the ZBA protects the Town.
3. **24' WIDE AISLE IN VICINITY OF LOADING DOCK:** Modzelewski explained that the plan the Board has seen shows an 18' – 20' wide aisle in the vicinity of the loading dock – Modzelewski wants 24' aisle width . However, the applicant sent a plan to Modzelewski that shows the 27' aisle width suggested but this plan was

- not sent to the Board. Modzelewski suggested that the 24' aisle could be conditioned because the plan sent to Modzelewski shows that the 24' aisle can be accomplished and would allow two-way traffic.
4. SEPTIC SYSTEM ABSORPTION SYSTEM (the 290 sq. ft. triangle of land in the 30' buffer): Modzelewski stated that if the Board does not allow the encroachment into the 30' buffer, they do not kill the project – the applicant can use other parts of the system – there are 4 other systems in reserve. Member Ivimey is uncomfortable conditioning approval over a major issue and in approving a plan when the applicant has expressed no intention to eliminate the encroachment. Member Brewer is uncomfortable with having inconsistencies with a motion and with plan as submitted although it is a negotiation – applicant can either abide by it or appeal. The encroachment was brought up at the first public hearing and every public hearing since and, the applicant made a conscious decision to keep the encroachment. Member Healey Dippold remains concerned about the 30' zone. She continues to believe the 30' zone should remain unused – including subsurface use. However, it could be conditioned, identifying or suggesting the use of an identified reserve systems not in the 30' zone. Humphreys commented that the reason they have been reluctant to change this is because of the expensive engineering involved and because they do not believe locating the system in the 30' buffer violates zoning. If the Planning Board puts a simple condition that no portion of the septic system be built in the 30' zone, they put the decision to appeal or not appeal on that issue and that issue alone or, opt to use one of the reserve fields. Member Moore asked if everyone was satisfied with the proposed plantings in the buffer. Member Brewer believes it is a vast improvement over what was originally proposed. Member Healey Dippold would prefer to see taller trees. Modzelewski noted that the way the Cook Estate has been graded to the site is so high, the Cook Estate residents will be looking down on trees whether they are 8' tall or taller. Moore thought taller trees might look better from Rt. 3A and the parking lot. Members Hannon and Samuelson suggested that the bylaw does not say the Board should count trees & micromanage what will be planted.
5. AC & NOISE: Modzelewski stated that this is not an issue in this day and age and DEP regulations protect against noise issues.

MOTION: By Member Ivimey to deny this application based upon the fact that it does not comply with zoning requirements regarding impervious surface and also fails to comply with bylaws concerning setback requirements that are set forth in 5.4.9 and 5.4.10 for the 30' and 100' setbacks and, collateral to that, the Board can't make a finding pursuant that the application complies with 12.6.2, subparagraphs, a-e.

SECOND: Not seconded

MOTION: by Member Brewer to approve the applicant's request for Site Plan approval with conditions:

1. 30' buffer is to be left unused and modifications made to the leaching field be performed at a later date to accommodate that
2. Existing impervious area % is not to be increased through whatever means are reasonable
3. Pedestrian access to Sohier St. and between the 3 major buildings is to be designed and created.
4. Trees must be a minimum of 12' tall instead of the 8'- 10' trees
5. Retaining wall fence is to be designed to meet all requirements of Mass. State building code and reasonable safety considerations
6. Area between Sohier St. and the light signal at the Stop & Shop shall be altered so site lines make a safer intersection
7. Signalization connected at Sohier St. to trip lights at the Stop & Shop intersection after X number of seconds of waiting at Sohier St.
8. Additional loading area aisle width of 24' minimum be incorporated into final set of plans

SECOND: Jeanne Healey Dippold

MOTION: by Member Healey to amend Brewer's motion to allow wordsmithing to reflect suggested changes to condition #1 above to clarify that no soil absorption system or mechanical systems are to be installed in the 30' buffer zone.

MOTION: by Member Samuelson to amend Brewer's motion to strike condition #1 above as, in his opinion, the subsurface system does not meet the criteria for the definition of "use" or "building".

SECOND: Not seconded

MOTION: by Member Ivimey to add two conditions:

1. Standard language that no light shall be cast off-site from the new proposed building
2. Irrigation must be installed for all planting areas - worded so as not to be contrary to concept of no use of the 30' buffer

SECOND: Member Brewer

VOTE ON AMENDMENT: 4-1 (Samuelson opposed) **MOTION CARRIES**

MOTION: by Member Ivimey to amend Brewer's motion to include condition that this decision was based on uses shown or implied by the plans and studies provided. Any change of use to more intensive uses shall require approval of the Board

SECOND: Member Healey Dippold

VOTE ON AMENDMENT: 5-0 **MOTION CARRIES**

MOTION: by Member Healey Dippold to amend Brewer's motion by adding condition that the Board should receive finalized approved erosion control plan and Stormwater Management Operation plans

SECOND: Member Ivimey

VOTE ON AMENDMENT: 5-0 **MOTION CARRIES**

Add boiler plate conditions including that the applicant must obtain all other necessary approvals from other Boards.

MOTION: by Member Healey Dippold to amend Brewer's motion to fence condition (#5 in original Brewer motion) that a fence must be installed that meets the approval of the Board's Engineering Consultant.

SECOND: Member Brewer

VOTE ON AMENDMENT: 5-0 **MOTION CARRIES**

MOTION: by Member Healey to amend Brewer's motion to include a condition that noise on site must comply with DEP regulations

SECOND: Member Ivimey

VOTE ON AMENDMENT: 4-1 (Samuelson opposed) **MOTION CARRIES**

MOTION: by Member Ivimey to amend Brewer's motion to include a condition regarding restricted hours for emptying of dumpster using the condition contained in the decision for the 154/156 King St. approval for the new Dunkin' Donuts/restaurant location.

SECOND: Member Brewer

VOTE ON AMENDMENT: 4-1 (Samuelson abstained – not familiar with 154/156 King St. condition)
MOTION CARRIES

MOTION: by Member Ivimey to amend Brewer's motion to include all engineering conditions consistent with the Board's Engineering Consultants suggestions made at previous meetings and review memos.

SECOND: Member Brewer

VOTE ON AMENDMENT: 5-0 **MOTION CARRIES**

Discussion about whether Cook Estate concerns as presented by Richard Henderson 08/31/10 memo: "Objections to Cohasset Place" and 04/06/10 memo "Restrictive Covenant" (existing, recorded covenant) should be included/addressed in decision/conditions. General consensus: abutter should enforce restrictive covenant, not Board.

VOTE ON MEMBER BREWER'S ORIGINAL MOTION TO APPROVE WITH ALL AMENDED CONDITIONS: 4-1 (Ivimey opposed) MOTION CARRIES

Planning Board Administrator questioned whether Lighting Plan submitted after close of public hearing should be included in public record – not to be included in public record.

10:00 P.M. ADMINISTRATION

- **VOTE TO APPROVE SEPTEMBER 22, 2010 MEETING MINUTES**
MOTION: By Member Brewer to approve September 22, 2010 meeting minutes
SECOND: Member Ivimey
VOTE: 5 – 0 MOTION CARRIES
- **SET NOVEMBER & DECEMBER MEETING DATES** – Nov. 3; Tuesday, Nov. 16; Dec. 8 and Dec. 15.
- **ADMINISTRATIVE CHANGE TO LARGE HOME REVIEW APPLICATION MATERIALS** – Board would at least like to see floor plans at the meeting, although some members preferred to see them sooner. Discussion included Board's preference to have the applicant submit PDF's as well so only PDF format is sent to them rather than paper. Administrator to look into.

MOTION: By Member Brewer to adjourn at 10:15 P.M.

SECOND: Member Ivimey

VOTE: 5 – 0 MOTION CARRIES

NEXT REGULAR MEETING: WEDNESDAY, OCTOBER 20, 2010 AT 7:00 P.M.

MINUTES APPROVED: JEAN HEALEY DIPPOLD

DATE: OCTOBER 20, 2010