

Present: William J. Keller, Jr. (Chairman), Lisa Eggleston, Christopher Morely, Michael Hunter, Michael Fee, Eric Poch (Associate, arrived 8:10 p.m.), Jody Kablack (Planner)

The meeting was called to order at 7:45 p.m.

Discussion with Zoning Board of Appeals

Present for Zoning Board: Tom Phelps, Pat Delaney, John Gossells (Chairman), Beth Taylor, Mary Corley, Steve Garriton, Steve Richman

Bill Keller spoke on the necessity and benefit of having the Boards in a joint discussion and thanked the Board of Appeals members for attending.

John Gossells: Reviewed the list of topics the Zoning Board submitted sighting common area for the two Boards. The first item discussed was special permit uses which are currently prohibited under recodification. Included to date:

- Especially for Pets
- Camp Sewataro
- Sudbury Animal Hospital
- John & Michael MacKinnon (special permit for Antique Sale)

Lisa Eggleston asked how these businesses were prohibited under bylaw recodification.

Jody Kablack: Under the old zoning bylaw there was a flexibility provision which left many vulnerabilities. Now if they are not in the use table, they are prohibited. These special uses have expiration dates. Town Counsel opines that they are grandfathered. John Gossells: It is those special uses opined to be grandfathered which are causing issues.

Bill Keller: Renewing special permit uses is a burden.

Pat Delaney: It is not entirely with respect to commercial renewals. Each renewal requires prolonged discussion regarding the time frame for the renewal. Guidelines need to be established; possibly terminate at 3 years rather than in perpetuity. The bylaw is unclear for the business/industrial district. There appears to be an oversight in the recodification in that if some uses were prohibited, what happens to the ones that existed? To be grandfathered with no oversight does not make sense and could cause future problems in that they can't be renewed as the terminology under the old bylaw does not exist. The use should have expired when it was deleted from the table, not be grandfathered.

Lisa Eggleston: Is there anyway to revise this?

Jody Kablack: With regard to Camp Sewataro, Town Counsel questions whether the special permit renewal should be reissued; not questioning whether the use became a non-conforming use.

Pat Delaney: That is what the Zoning Board is looking for.

Tom Phelps: Is it on the list for Town Meeting this year?

Jody Kablack: There is not a list as of yet, other than the sign bylaw. This could be put on.

Tom Phelps: The Zoning Board recognizes problems and believes the Planning Board would have more authority to recommend these changes.

Pat Delaney: The Zoning Board would like to be involved in the recodification to help clean-up and align the text in the bylaw for renewals.

Jody Kablack: Is it the Zoning Board's practice to send out renewal letters?

Mary Corley: It had been, however, the applicants were not coming back and no action was taken.

Bill Keller: Does the Zoning Board require renewals for all special permits?

John Gossells: Not if it's a structure.

Mike Fee: Is it a good tool to have terms on special permits?

The consensus of the ZBA was that it is a good tool.

Pat Delaney: If the right set of conditions were initially met, there wouldn't be a need for renewals, however, that does not typically happen.

Mike Fee: A balance must be reached; would there be some language the ZBA could impose which wouldn't repeatedly require the ZBA to renew/revisit? It may be more feasible to take one shot at the conditions and see what the holder does.

Steve Richman: The renewals are more of a way for the ZBA to exercise control.

Mike Fee: If the Board crafts the issues carefully at the outset and there is a permit violation issue, there is zoning enforcement.

Pat Delaney: In the case of sensitive permits; any type of business in a residential district (i.e. the antique shop) in which it exists under certain rules, the applicant quickly changes it's perception as commercial property rather than residential.

Tom Phelps: Another reason the Zoning Board is happy with the renewal process.

Lisa Eggleston: Is there a down side to renewals for the property owners?

Tom Phelps: No.

Bill Keller: There could be a potential down side as the Board members change as well as a recurrent business expense. Business owners may feel an uncertainty when they know they have to renew that they may not get future approval.

Pat Delaney: Feels the Town owes it to property owners to draft an article for the four mentioned special permit holders.

Tom Phelps: Business owners could be in jeopardy if they try to grow.

Item 2: Review Coordination between Planning Board and Zoning Board without delays or due process issues.

Lisa Eggleston: Does the Zoning Board review what the Planning Board reviews?

John Gossells: Yes, typically after the Planning Board has reviewed it, the Zoning Board then does.

Jody Kablack: A good example is the application for 80 Union Ave. They needed both a Special Permit from the Zoning Board and a Water Resource Special Permit for the Planning Board. There are cases where plans are developed to a definitive stage and we

do not always have time to respond to the ZBA hearing. An extension of time should be requested when multi-Board review is applicable. The project results are better when the extension is granted. Although it may take additional time to get it to Site Plan Review it is worth it; all the Boards' issues are known.

Mary Corley: The Board has 65 days from receipt of the application to take action.

Applicants do not generally like to wait the 65 days.

Lisa Eggleston: That time frame is in regard to the public hearing; does the hearing have to be closed in the 65 days?

Mary Corley: No, in the case of a variance the Board is bound to 100 days unless it is extended.

Jody Kablack: Applicants being in a rush is a common occurrence; however, Boards need to stress reasons for extended time review. Generally, the applicant understands the reasons and appreciates that the process will go more smoothly as a result.

Bill Keller: The Planning Board has had positive experiences in getting extensions from applicants.

Mary Corley: If the Zoning Board has to extend the timeframe, a problem comes in to play in that a definite date for the next hearing cannot be given upon the extension request. This doesn't work from a relationship point; not sure how it works from a legal point.

Steve Richman: The Board could open the hearing then comment for an extension of possibly 30 days in order to complete the process more smoothly with better end results.

Pat Delaney: They have told the applicant if the Board is forced to continue without sufficient time for a complete review it could be harmful to them but they persist on rushing.

Mike Hunter: Are there cut-off dates to get onto a Zoning Board agenda?

Mary Corley: Typically one month before the next meeting.

Bill Keller: How often does the Board meet?

Mary Corley: They try to meet one time a month.

Pat Delaney: Due to the infrequency, the Board tries to address all cases in the same evening. This often results in difficulty reaching decisions as they often need input from the Planning Board. (Also an item on the Zoning Board's list of topics to discuss – item 5.)

Bill Keller: It may be helpful to give a copy of the application to Jody Kablack as soon as possible.

Lisa Eggleston: Are there any triggers on an application that would flag the need for additional Board comments, thus needing an extension from the applicant?

Jody Kablack: Any new commercial property goes through a pre-application review if it goes to the Board of Selectmen.

Lisa Eggleston: With regard to Water Resource Special Permits, is it appropriate for the Zoning Board to look at case by case if it falls under Planning Board issues? What does the Planning Board need to review?

Mary Corley: The Planning Board needs to review commercial applications.

Jody Kablack suggested they send all applications they receive to her and she will pull out the relevant ones for the Planning Board.

Mike Fee: It may be helpful for the Zoning Board to develop a protocol of thresholds for Planning Board input.

Mary Corley: Currently sends a memo with the application requesting the Planning Board's input.

Jody Kablack: We typically need more time than what is asked.

Pat Delaney: It would be helpful if the Planning Board cited a reason for that with the applicant.

Lisa Eggleston: What about having a Planning Board representative available at the Zoning Board meetings?

Jody Kablack: That is the case at the Selectmen meetings and it is extremely helpful. She is happy to be present at necessary hearings for the Zoning Board but due to availability reasons, it would be helpful to have Planning Board members available as well.

Mike Fee suggested rotating schedules between Board members.

Tom Phelps: What about Chairman to Chairman conversations? He believes that to be important. Bill Keller concurred.

Due to time, the Boards addressed item 6 on the list – avoiding recommendations to the Zoning Board based on potential future Planning Board Annual Town Meeting zoning articles.

Jody Kablack referred back to the application for 80 Union Ave. which reinforces the Planning Board is in favor of recommendations on this basis.

Pat Delaney: There is more than one instance. It gets complicated for applicants regarding the vote by the Attorney General. If it were explained they are changes with an ending, it would be helpful with the frustration level.

Item 7 on the list – request the Town Planner study and report on permit granting authority split between the Selectmen, Planning Board and Zoning Board.

Jody Kablack: Some changes to the Use Table did occur during the comprehensive revision to the bylaw which reduced the number of ZBA special permits, particularly uses that require Site Plan Review by the Selectmen.

Pat Delaney: It is all different reasoning for special permits being granted which is very difficult for the Board to explain.

Jody Kablack: Specifically with regard to zoning - Selectmen only have one special permit; Planning only has residential special permits, Water Resource & Wastewater Special Permits and the Zoning Board has all the others.

Pat Delaney: With an overlap in the Water Resources Special Permit. The particular example of Northwood was pointed out which was also said to be a unique situation. Pat Delaney said he would research other cases in order to provide a better overall picture.

Tom Phelps: Before concluding, as a general comment, bylaw changes are anticipated. With respect to the Master Plan, the Zoning Board has restrictions between the Master Plan and bylaw changes. Is the Master Plan a legal basis for a variance?

John Gossells: Speaking from a variance standpoint rather than a special permit.

Mike Fee: What does the Zoning Board perceive as its limits of discretion?

Tom Phelps retracted the statement saying the Board has wide discretion.

John Gossells: However, there are things in the bylaw the Board cannot ignore.

Steve Garriton: Variances are very limited.

John Gossells asked the Planning Board for their comments.

Mike Fee: Heard what the Board said about the zoning bylaw – are there other problematic areas as well?

Pat Delaney: They have addressed the zoning bylaw for conflicts with respect to State law; the remainder is good.

John Gossells: Would like to clarify height limitation; commercial in particular.

Tom Phelps would like to address teardowns and enforcement of teardowns.

Pat Delaney : The Zoning Board role for teardowns is unclear.

Jody Kablack: Participation at public hearings is critical to preserving neighborhood character.

Pat Delaney: That usually does not happen unless there is concern of two homes on the same lot.

John Gossells: Side setbacks and location of houses in a different area are typical input from the Zoning Board, however there are no guidelines.

Tom Phelps: In addition the applicant is not always certain on what they are going to build. The Town should keep new construction in sync with the character of the neighborhood.

Jody Kablack: We cannot restrict the size of the interior of a residential structure.

Lisa Eggleston: We are not looking to stop construction so much as it being a case of redevelopment versus new development.

Steve Garriton: The few conditions the Zoning Board does impose should be written into the bylaw.

The Boards concluded with a mutual feeling of helpfulness resulting from the discussion and thanked each other for the cooperation shown.

Goodnow Road – Improvements to Turnaround

Jody Kablack: The issue is at the end of the turnaround that was proposed during subdivision. There has been a lot of stonework done; this is alarming as it is within a right of way and the Planning Board has jurisdiction of walls. It was surprising to see the pillars installed at less than an 18' separation, which is the minimum allowed. The contractor was asked to stop construction (which he did).

The Town Planner proceeded, showing pictures to the Board members. Most of the Board members had gone individually to look at the situation and did not approve of what they saw. The Shepherds (92 Goodnow) did their own stonework as well. It is now too narrow and not inviting for turnarounds as contemplated and approved in subdivision. Under approval, it was supposed to be 20' in width; Bill Place permitted reduction to 18'. Where the driveway meets the pavement is 18'; that is not an issue, the pillars are.

John McNulty: Contractor for the owner of Lot 8 (who is building the pillars):
The pavement is not 18'. The pillars are 16.6' off the pavement which is 15', flares up to 18' then to 20' at the end. As Jody stated, they have stopped construction and are willing to move the pillars to whatever distance they Board directs.

Lisa Eggleston: Originally the effort was to preserve the existing trees and stone walls, which are gone now, as well as providing a safe turnaround. The plan was accommodated to meet those features.

Chris Morely: It was agreed not to do a cul-de-sac in order to preserve trees and natural aesthetics and most of it is gone.

Jim McNulty: They tried to stay in tune with what was approved – there will be a turn-around further down.

Mr. Shaakar: There is currently high traffic – he is aware the Town can use the road but his property is private and can be used by anyone for a turnaround due to easements. He opines you cannot see the pillars; not intrusive. People come right onto his property.

Jody Kablack: The pillars should be moved past where the turnaround is so everyone has the capability of turning.

Jim McNulty: The pillars are not impeding anything.

Chris Morely: They do impede; they essentially create a driveway look to what is supposed to be a public turnaround. Pillars indicate private property.

Eric Poch: It absolutely gives the appearance of a formal barrier and does not give a public access view.

Jim McNulty: They are not disputing the turnaround – willing to move the pillars to 20' width.

Lisa Eggleston: Pillars are a visual barrier; if they are up you should at least do something to mitigate such as a sign.

Mike Fee: Why can't you just move the pillars?

Jim McNulty: One pillar is next to a tree; aesthetically pleasing. They are willing to do the separation of pillar on the left.

Bill Keller: Wants input from the Fire Chief and the Town Engineer before anything else is done.

Eric Poch: Is it a Town road?

Jody Kablack: No – only to a point; it has a public access easement.

Eric Poch: Would that be subject to walkway construction?

Bill Keller: Walkways were discussed at the time but did not work out.

Jim McNulty: It was originally approved as a 20' area? Jody Kablack: Yes.

Jim McNulty: That was prior to our involvement – we are happy to keep it at 20' width the Fire Chief's approval.

Jody Kablack: Any permanent structure needs the review of the Planning Board when it is in a road in a right-of-way. Believes this may be against regulations without Planning Board consent.

Jim McNulty: Is there anything we can do to help the Board?

Mike Fee: Get clarification from Bill Place on field modification to 18'.
The Board will readdress after receiving comments from the Fire Chief and Town Engineer.

Hillside Avenue

The Board agreed to speak with Attorney Robert Dionisi to discuss property on Hillside Ave. owned by William Hall who resides in Florida.

Bob Dionisi: He is representing Bill Hall and is before the Board to determine to what extent a portion of Hillside Ave. needs to be constructed to provide access to Lot 4. Based on a 1959 decision, it is considered a legal lot. There is an extension to Clifton Ave, which does not service lots and that intersects with Pokonoket Ave. Currently Hillside Ave. is developed to about ½ of its length. Lot 4 has access through a 25' easement.

Bill Keller: The only way onto Hillside Ave. is from Pokonoket Ave.?

Bob Dionisi: Yes. They are requesting to build to service Lot 4 only (most likely through a common driveway).

Bill Keller: The 1959 decision you referred to; was it a Planning Board decision?

Bob Dionisi: Yes.

Jody Kablack: Was not able to find a recorded decision; there was a letter dated January, 1959 from the Planning Board to the Clerk indicating approval for 3 lots.

Bob Dionisi: The Town Clerk's letter indicates 4 lots.

Jody Kablack: Does not have that letter in her possession. Also, the application does not say the number of lots.

Lisa Eggleston: Do we have the Deed for Lot 3?

Bob Dionisi: Yes, but it isn't Lot 3, it's an easement for the lot just south of Lot 3.

Board members asked Mr. Dionisi what exactly he was looking for from the Planning Board.

Bob Dionisi: The determination as to the extent of which remaining portion of Hillside Ave. needs to be constructed to service Lot 4.

Mike Fee: Hillside Ave. is not built west of Pokonoket?

Bob Dionisi: It is about ½ way.

Chris Morely: Are the 4 lots behind Lot 4 owned by Mr. Hall as well?

Bob Dionisi: Not technically, they are owned in Trust. Bill Place has deferred comment on construction of right-of-way to the Planning Board.

Mike Fee: Is the intent to construct a single family house on Lot 4?

Bob Dionisi: Yes.

Mike Hunter: This is a paper street approved during subdivision; deeded right-of-way to parcel 4. What does the Planning Board have jurisdiction on?

Bob Dionisi: Believes the Planning Board has jurisdiction over the construction of the remaining portion of Hillside Ave.

Lisa Eggleston: Who owns it? Bob Dionisi: The Town owns it.

Chris Morely: The lot has no frontage.

Bob Dionisi: It does.

Chris Morely: Are you planning frontage on the Clifton Ave. radius? Bob Dionisi: Yes.

Chris Morely: Clifton Ave. doesn't exist – it's been absorbed by property owners.

Lisa Eggleston: How is the property being taxed?

Bob Dionisi: Not certain.

Bill Keller: You will need to provide more information including:

- The letter from the Town Clerk stating it is 4 lots
- Bill Place's recommendation and input on what's proposed.

Mike Fee: Would also like Town Counsel's opinion on the frontage; how it is established and if it is legally tentative.

Eric Poch: Without frontage, it's not a buildable lot.

Lisa Eggleston: We need to know how many potential lots there are on Clifton Ave.

Eric Poch: Also, how should construction take place in order to access?

Bill Keller: You are certain your client does not own all 4 lots?

Bob Dionisi: He does have some control but unclear on exactly how much.

Jody Kablack: More information is needed to establish status which has not yet been provided. Clifton Ave. is not shown on the official map.

Bob Dionisi: The only other possible proposal could be one other lot.

Will the deed (for Lot 4) suffice?

Bill Keller: That would be helpful.

Mike Fee: Town Counsel needs input with inquiries through Jody Kablack.

Bob Dionisi: Can it be on the Planning Board November 12th agenda?

Bill Keller: We have to see what we have scheduled.

Frost Farm Update

On motion duly made and seconded, it was unanimously:

VOTED: To go into Executive Session to discuss Frost Farm.

It was a roll call vote.

FY05 Budget

Jody Kablack: Provided the Board with the instructions for the Planning Board budget as well as a draft. There is 0 growth for 2005; the Supervisory Union has not negotiated contracts yet. There is \$6k available for the Planning Board to use. This money could be better used for expenses rather than an intern or consultant (cannot go into salaries).

Mike Hunter: How do we compare with other Boards?

Jody Kablack: Mitigation expense is up; fee revenue is down, however, walkway and stormwater management monies have been used well.

The Selectmen have not had their goal setting meeting yet, but they are considering the Planning Board's issues.

Maple Ave. SRC Proposal – Update

Jody Kablack: The applicant has met with the neighbors. One request the neighbors made was for the primary access to come from Feeley Field and that a chain be put up on the Maple Ave. side.

Lisa Eggleston: Doesn't like the through traffic on the recreation road (Raymond Road). Access to public land is an issue; emergency access should be provided for public benefit; private access is not a public benefit.

Jody Kablack: There was discussion on the ability to include affordable units. They have just over 29 acres; they would need just 5½ additional acres to separate the parcel into a 20 acre SRC and a 10 acre Incentive Senior Development. This would allow approximately 4 ISD units which are lower priced (but not affordable). It would be good income for the Town and would help with Executive Order 418. It would be entirely age restricted and just 2 more units to what they proposed.

Lisa Eggleston: Would there be sewer issues? It may not be viable – close to wetlands. If the area is preserved would anything limit it from being used?

Jody Kablack: Still have to meet open space requirements.

Minutes to Approve

On motion duly made and seconded, it was unanimously:

VOTED: To approve the minutes of 8/5/03, 8/20/03 and 9/10/03.

Miscellaneous:

Twillingate Street Trees

Jody Kablack briefly updated the Board that the trees were planted. They are all Red Maples and look good.

80 Union Ave. Operation and Maintenance Plan

Lisa Eggleston:

- Maintenance for the structures in the parking lot should be included in the maintenance plan.
- They need inspection reports
- Should be designated snow storage on the plan

Capital Improvements/Walkways

Jody Kablack briefed the Board on walkway funding and progress. Requests have been made for \$100k through the Town's budget and \$100k through the Community Preservation Committee. Only one of these will move forward. Construction of walkways with appropriated funds from FY01 and FY02 has worked very well with 7 being completed. In addition, funds from the Department of Public Works budget have enabled us to repave several older walkways.

Dudley Road; Pine Hill Lane Right of Way Stone Wall Proposal

Jody Kablack: Al Maillet is proposing stone wall construction on Dudley Road within the Pine Hill right-of-way. He is proposing an unstructured wall; 2' wide, 3' high with 4' tall pillars (2' x 6' square) with a sign in the middle. There would be a 6' separation between the pavement and the wall which is ample. As it is within a right-of-way, it requires Planning Board approval. In addition, Dudley Road is a scenic road.

Lisa Eggleston: Sight distance is a concern; would like a note that it is adequate sight distance. A wall can create a visual barrier so Bill Place should review the sight distance.

Jody Kablack: The wall is not proposed to go far to the west, only up to the existing trees. Since it is a scenic road, it should be noted there will be no further tree removal or stone wall removal without Planning Board consent.

The Board made one additional condition for approval; the wall should be constructed as an old-time farmer's wall. The wall should not be squared off.

The meeting was adjourned at 10:30 p.m.