

Present: Michael Fee (Chairman), Lisa Eggleston, Christopher Morely,  
Michael Hunter, Eric Poch, Joe Sziabowski (Associate), and  
Jody Kablack (Director of Planning and Development)

**115 Willis Road - Scenic Road Public Hearing**

Present: Maurice Fitzgerald and Lyn MacLean, Sudbury Historical Commission, Scott Taylor, Tree Warden, William Peng, Applicant

At 7:40 p.m., Chairman Fee called the meeting to order and opened the Scenic Road Public Hearing concerning an application for changes to a Scenic Road filed by William Peng and Hong Geng, 115 Willis Road, for relocation of a portion of a stone wall for construction of a driveway, and removal of certain trees, which had been continued from May 9, 2007. He noted that a revised notice of public hearing has been advertised in the newspaper, since the previous notice had misidentified the tree species.

On motion duly made and seconded, it was unanimously:

VOTED: To waive the reading of the official public notice for this hearing.

The legal notice was duly published in the *Metro West Daily News* on May 14, 2007.

Ms. Kablack highlighted that the applicant has revised his application to request a circular driveway. She noted for the record, that in order to comply with the public shade tree bylaw, a new public notice was submitted, noting each tree and its proper species.

Chairman Fee asked the Tree Warden's assessment of the trees in question. Mr. Taylor responded that the 18" maple should be removed, since it presents a public safety hazard as it is leaning across the road. Mr. Taylor further reported that two portions of the triple maple are unhealthy and should be removed. This will necessitate the removal of the third portion of the triple maple as well.

Applicant William Peng explained to the Board that he would like to take this opportunity, while building a new house on his lot, to relocate the driveway, which he believes has very poor access and sight distances presently. He has also requested approval of a circular driveway for safety purposes, since there is no on-street parking available for guests. Mr. Peng exhibited a revised plan including the circular driveway.

The Board reviewed copies of the plans previously provided, noting that it appears as if the circular driveway would have to be installed over the septic system. Mr. Peng clarified that the primary septic system is in the back yard, and that only the back-up system is located in the front.

Ms. Eggleston agreed that all homes on Willis Road share the same problem of the absence of on-street parking. However, she questioned whether approval of this application would set a precedent for other requests. She also asked if the driveway could be relocated without cutting the stone wall twice.

Lyn MacLean stated that she believes the bylaw prohibits two driveway entrances. Ms. Kablack explained that such design standards could be waived in the interest of public safety.

Ms. Kablack stated that the plans were initially subject to a Special Permit. Since the circular driveway was not on that plan, Ms. Kablack believes a modification of the Special Permit would be required from the Zoning Board of Appeals. Chairman Fee agreed, and stated that any decision from this Board would be regarding the removal of the trees and stone wall only.

Ms. McLean said the Historical Commission has assessed the stone wall, and finds the removal requested in this application acceptable. She distributed a photograph of the stone wall for review. Mr. Fitzgerald stated that the Historical Commission's position is that only one cut should be allowed into the stone wall.

The Chairman asked for the Board's consensus on two cuts to the stone wall. Most members agreed that the preference would be to cut the wall once to relocate the driveway. Mr. Morely added that the stones removed at the new cut should be used to fill the previous driveway opening. Mr. Sziabowski opined that perhaps two cuts in the stone wall might not be so detrimental to the aesthetics of the site.

Chairman Fee said that although the Board is cognizant of the valid safety reasons to consider a relocation of the driveway, it will be unable to vote on that issue this evening due to it not being considered in the ZBA Special Permit approval.

On motion duly made and seconded, it was unanimously:

VOTED: To close the Scenic Road Public Hearing concerning the removal of certain maple trees at 115 Willis Road, and the relocation of a portion of a stone wall at 115 Willis Road, a designated scenic road in Sudbury.

On motion duly made and seconded, it was also unanimously:

VOTED: To authorize the removal of one 18" maple tree and one triple 12" maple tree at 115 Willis Road, and to authorize the removal of 15-20 feet of stone wall in order to create one driveway opening, with the stones relocated to the existing driveway cut, and that the replacement work be completed in a consistent manner with the existing stone wall.

On motion duly made and seconded, it was also unanimously:

VOTED: To deny the revised application for creation of a circular driveway at 115 Willis Road, a designated scenic road in Sudbury, in accordance with the Zoning Board of Appeals Special Permit.

**1 Cail Farm -Advisement Briefing**

Present: Roy Antonelli, Builder, Dan and Linda Consoletti, Owners

Ms. Kablack asked the Board for clarification/direction as to whether the proposed grading plan for Lot 1 Cail Farm is consistent with the Board's decision for this subdivision. The issue is whether condition 13 of the Definitive Cluster Special Permit Decision dated April 26, 2006, has been met with the submitted building plans presented to the Building Inspector. Building Inspector Jim Kelly apprised Ms. Kablack that the grading is slightly different on the plans recently submitted to him for review.

Ms. Kablack briefly reviewed that during previous discussions, neighbors of this site had expressed concern regarding the waiver of the 100' buffer for a cluster subdivision, and noted that condition 13 contained provisions meant to mitigate the decrease in the buffer so that construction has less impact on the neighboring property. Ms. Kablack has reviewed the original decision, and has found no specific language regarding grading. The condition states that the Board has jurisdiction over "location and orientation" of the new house.

Mr. Antonelli confirmed that the bottom of the house has been raised by 1 1/2" and the top of the foundation has been raised 3". However, he emphasized that the average grade of the proposed structure is in compliance. The septic has not changed, and the system remains at the same grade and elevation.

Upon a brief review, Mr. Morely's initial reaction was that the slight revisions will most likely be viewed as preferable to the neighbors. Thus, he does not foresee any objections. Ms. Eggleston agreed.

In response to a question from Mr. Poch, Chairman Fee clarified that the Board is only trying to determine if the grading variance constitutes the need for a modification. Chairman Fee believes that the revisions are consistent with the operative language from the decision which states that it be "in the same location and orientation as shown on the plan." Thus, the Planning Board deliberated and determined that the construction is consistent with the previously approved Special Permit plan and does not require a modification.

The Board acknowledged how helpful and important it is to have the Building Inspector flag such details for its attention, and extended its gratitude to Mr. Kelly.

**Pine Grove Definitive Subdivision (Old Lancaster Road) - Public Hearing**

Present: Thomas DiPersio, Sr., and Thomas DiPersio, Jr., Thomas Land Surveyors and Peter Karasik, Eligius Homes

At 8:15 p.m., the Chairman opened a Public Hearing in connection with the application of Eligius Homes Company, for approval of a Definitive Subdivision Plan of Land

entitled "Pine Grove," property located at 293 and 301 Old Lancaster Road, drawn by Thomas Land Surveyors and Engineering Consultants, Inc., dated April 9, 2007, and showing six lots on approximately 7.19 acres. He read the legal notice for the record, which was published in the *Sudbury Town Crier* on May 10 and May 17, 2007 and in the *Metro West Daily News* on May 8 and May 15, 2007.

The Board was in receipt of the following material: the Form C application filed April 18, 2007; a Form D Assessor's Certified List of Abutters dated March 28, 2007; a letter dated January 29, 2007, from Thomas P. DiPersio, Thomas Land Surveyors & Engineering Consultants, Inc., who has been engaged by Eligius Homes to review design issues regarding possible development of 293 and 301 Old Lancaster Road, questioning the interpretation made by the Board regarding the calculation of the offset regulation of 360 feet from existing streets on the same side of the road; a letter dated May 14, 2007, from Department of Public Works Director William Place, which presented several plan deficiencies needing revisions; a letter dated May 8, 2007, from owner Janet Johnson noting she has entered into a Purchase and sale Agreement with Eligius Homes Company, Inc.; a letter dated May 7, 2007, from Ms. Johnson's law firm Edwards Angell Palmer & Dodge LLP, confirming Ms. Johnson as the rightful owner of the property; the Evaluation Form for Subdivisions, dated May 17, 2007, which includes comments and recommendations; an Environmental Impact Assessment prepared by Thomas Land Surveyors & Engineering Consultants, Inc., dated April 9, 2007; the ANRAD Application prepared by Ecosystem Solutions, Inc., dated August 2006; a Perimeter Closure listing, dated April 9, 2007; and confirmation letter and materials of a clear title examination performed by Rainen Law Office, P.C., dated April 13, 2007.

Ms. Kablack prefaced the discussion by noting that the applicant had previously pursued several informal conversations regarding street offset issues with the Board. During those discussions, the Board expressed its inclination to oppose the position presented by the applicant unless presented with convincing evidence to do otherwise. Nonetheless, Ms. Kablack reported that the applicant has decided to proceed with the submission of this application. The Board will have 135 days from the time of submission to render a decision by September 2, 2007.

Mr. DiPersio, Sr. addressed the Board to explain the proposal. He exhibited an existing conditions site plan. He described the proposal to develop approximately 7.2 acres of land on the westerly side of Old Lancaster Road into a six-lot subdivision. The project

will include six new homes on a 500-foot cul-de-sac road to be accessed off of Old Lancaster Road. The lots would range in size from 40,000 square feet to 63,390 square feet, and each lot will have at least 180 feet of frontage. The homes will be single-family, containing four or five bedrooms. The eastern end of the site is a mix of open field and woods. There are presently two dwellings with two accessory structures on the site, which are proposed to be demolished. There are wetlands on the property. Mr. DiPersio, Sr. noted that it may be necessary to remove some trees and a portion of a stone wall for an entrance, which will require a permit under the Scenic Road bylaw. The site is adjacent to Hop Brook, and portions of the site contain vegetated wetland and Riverfront Area. A notice of Intent will be filed soon with the Conservation Commission.

Mr. DiPersio, Sr. reported that soil testing has been completed and witnessed by the Board of Health. Soils are primarily Class A sand and gravel. He highlighted that the proposal presents road grading which mimics the existing topography. Plans have also been made for an infiltration system for stormwater management. Mr. DiPersio, Sr. also briefly reviewed exhibits of a Profile Plan, Erosion and Sedimentation Control Plan, and Construction Details.

Mr. DiPersio, Jr. addressed the Board regarding drainage. He noted that there is not a lot of runoff under existing conditions. The proposed stormwater system has been designed in accordance with the DEP Stormwater Management Policy. An infiltration system, which will recharge on-site with pretreatment, has been planned as mitigation. The homes will all have roof water collection systems and dry wells. He emphasized that the proposal will keep grading revisions to a minimum.

Chairman Fee requested that discussion focus on the intersection offset, since this issue has been flagged as crucial to any decision by the Board. Chairman Fee stated that the Board has thus far, declined to consider such a waiver, until provided, by the applicant, with a compliant plan to review. Based upon tonight's presentation, Chairman Fee surmised that a compliant plan has not been presented, but rather a waiver plan. Mr. DiPersio, Sr. confirmed the Chairman's observations as accurate.

The applicant's proposal poses the major issue of whether this development proposal meets the Subdivision Regulations regarding offset of the new street from existing roads on the same side of the street. A 360-foot separation between streets, measured from the closest edge of the right of way is required. Mr. DiPersio, Sr. opined that in order to determine the proper definition of offset, one must refer back to the Zoning Bylaw definition of frontage. He argued that in most towns, the basis upon which this calculation is determined is usually frontage. Thus, the applicant's proposal has been measured from the intersection of the tangents, versus from the edge of the right of way.

Mr. DiPersio, Sr. briefly described tests completed for sight distances, which he described as meeting, and/or exceeding, compliance standards. He also presented the

Board with a few situations where the actual distances between other area roads were less than required. For example, Brownstone Lane was required to be 125 feet from Wildwood Lane, but is only 114.17 feet apart. (NOTE: Wildwood Lane is on the opposite side of Old Lancaster Road from Brownstone Lane and is governed by a different regulation.) The Board was not willing to speculate as to how and why that situation exists or came to be without further information.

Ms. Kablack responded that unfortunately, the Board differs in its interpretation upon what criteria the calculations should be derived. Ms. Kablack stated that each Town regulation has its own specific measurement as described in material she provided to the Board for review. Chairman Fee agreed with Ms. Kablack's conclusion. He noted that the Board had asked to see a plan in compliance with the Town's clearly-defined regulations, and that in his opinion, he has not seen that demonstrated this evening. Chairman Fee emphasized that although the bylaw does speak to alignment and width of streets, there is no mention of frontage in the regulation language under discussion tonight.

Mr. Morely stated that the language is literal and clear, and does not have to be consistent with other regulations and definitions. Ms. Eggleston concurred. Mr. Poch opined that it is obvious to him that the rationale presented by the applicant refers to only lot frontage, and has no bearing on the regulations for offset of streets.

Mr. DiPersio, Sr. stated that he discussed this matter with Town Engineer/Department of Public Works Director William Place, and Mr. Place agreed with the applicant's interpretation. Ms. Kablack reported also speaking to Mr. Place regarding this issue, and determined that Mr. Place's words were taken out of context. Since, Mr. Place was not present this evening, Chairman Fee and Ms. Kablack recommended that Mr. Place be invited to a future meeting to confirm his remarks.

Mr. Morely announced that although he is not a direct abutter, he is a neighbor in the area, but does not believe that constitutes recusing himself from these discussions. Chairman Fee asked if anyone opposed Mr. Morely's participation. No objections were voiced.

Chairman Fee summarized that this is an issue upon which reasonable minds could differ. However, he continued to say that the Board maintains its position as to how the calculations for street offsets need to be determined. Unfortunately, it is the consensus of the Board, that tonight's presentation has not transcended this threshold issue. Thus, the Board would be inclined to deny the application based upon non-compliance. Chairman Fee further informed the applicant that it would be their decision as to whether to continue to the next level, by asking a Court to decide whose interpretation is correct.

Ms. Eggleston asked Mr. DiPersio, Sr. to clarify whether the application includes a waiver request for this provision. He responded no, that it is for an approval for the proposed subdivision.

Mr. DiPersio, Sr. questioned how it is possible that the Board would reach a different conclusion than two engineers, Mr. Place and himself. Ms. Eggleston, responded that she disagrees with the applicant's assertions not only as a Board member, but also as a third engineer. Ms. Eggleston stated that what the bylaw should say, or is intended to say, might be very different questions. She continued to say that, however, this Board is charged with only enforcing what it clearly and currently states. She suggested that no further interpretations should be considered until the Town Engineer can respond to the perceptions of Mr. DiPersio's conversations with him.

Ms. Kablack offered for clarification that she had reviewed the right of way plans for the subject streets with Mr. Place. Mr. Place confirmed that the closest edge of the right of way for each street is the end of the radius where it intersects with the adjacent or perpendicular street. Mr. Place would agree with Mr. DiPersio's interpretation if the regulation was related to frontage. However, it is not, and any language relating to frontage is absent from the regulation as written.

Craig Blake, 300 Old Lancaster Road, questioned the Board regarding inconsistencies in other area road measurements. Ms. Eggleston reiterated that no member of this Board was elected at the time those decisions were made. Ms. Kablack stated that previous decisions could be reviewed, if necessary.

Steve Fisher, 24 Wildwood Lane, referenced average speed limit study results of 36 mph done for Old Lancaster Road. Mr. Morely clarified that the proposed plans have been based on 40 mph.

Mr. Blake questioned Mr. DiPersio, Sr. about the drainage positions off of Old Lancaster Road. He noted that Old Lancaster Road is heavily sanded because of its proximity to the Department of Public Works, and has concerns that sand will get dragged into the infiltration system.

Mr. DiPersio, Sr. asked Ms. Kablack if the street offset requirement has ever been waived. She responded never to her knowledge, since the regulation was adopted in 1999.

Chairman Fee summarized that the Board's position seems clear. He asked the applicant whether they would like to withdraw its application. Developer Peter Karasik of Eligius Homes adamantly responded that he does not want to withdraw, and will proceed with the application process. He strongly stated that he would not have pursued this project to

this point had he not believed he had the backing of the Town Engineer Bill Place. If necessary, Mr. Place can be put on the stand to confirm or deny their interpretation.

On motion duly made and seconded, it was unanimously:

VOTED: To continue the Pine Grove Definitive Subdivision Public Hearing on June 13, 2007 at 7:30 p.m., and request that the Town Engineer provide additional information.

Chairman Fee asked that any new material to be added to this file be submitted preferably prior to June 6th to allow for adequate distribution time to the Board for review. He also informed abutters that file materials can be viewed in the Planning Office during regular office hours.

#### **Kayla Court - Extension to Subdivision Decision**

Present: Robert F. Dionisi, Jr.

Attorney Robert Dionisi, representing Andrew Donovan, briefly addressed the Board to request an extension for the required work on the ground to be completed which was to be done within two years of the date of the plan endorsement. He explained that the lot has been sold, and is under contract to be purchased. Ms. Kablack stated no objections to this request.

On motion duly made and seconded, it was unanimously:

VOTED: To approve an extension until June 1, 2009, to construct the ground work needed at Kayla Court, as requested by Petitioner and Owner Andrew Donovan.

In response to a question from Mr. Morely, Mr. Dionisi provided clarification regarding the location of the proposed drainage facility as noted by the Conservation Commission. It was stated that the location of a dry well for roof drainage is never dictated within a subdivision decision, as the exact house location is rarely known at the time of subdivision approval. Mr. Donovan and his representatives will work with the Conservation Commission appropriately regarding this matter.

#### **Willis Hill II Subdivision - Progress Update**

The Board was in receipt of an email message dated May 3, 2007 from abutter Eamon O'Malley, 46 Cudworth Lane. Mr. O'Malley claims that the work to be completed at the site on Kendra Lane either has not been completed or was done haphazardly. The utilities trench was not properly filled and remains open, and the asphalt sidewalk has not been repaired.



Ms. Kablack visited the site recently, and spoke with developer, Robert D. Quirk. She reported that progress has been made on outstanding work to be completed. The sidewalk will be paved according to proper standards within the next few days. Mr. Quirk intends to finish the subdivision, and is willing to satisfy all of Mr. O'Malley's requests. Ms. Kablack believes that all parties are satisfied at the moment with the project status.

**Miscellaneous  
Minutes**

On motion duly made and seconded, it was unanimously:

VOTED: To approve the minutes of June 28, 2006, September 13, 2006, September 24, 2006, October 11, 2006, October 25, 2006 and March 28, 2007.

**Open Space and Recreation Plan - Representative Appointment**

It has been requested of the Board to appoint a representative to work on the Open Space and Recreation Plan.

On motion duly made and seconded, it was unanimously:

VOTED: To appoint Christopher Morely to work on the Open Space and Recreation Plan as the Sudbury Planning Board Representative.

**Villages of Old County Road Comprehensive Permit - Proposed Changes**

Ms. Kablack distributed to the Board, for informational purposes, copies of a letter from the Design Review Board to the Zoning Board of Appeals, dated May 10, 2007, recommending the proposed garage design modification plan, but noting that the effect of many of garages on the main facades should be mitigated as much as possible.

**Sudbury Historical Commission 2007 Goals**

Ms. Kablack distributed, for informational purposes, copies of the Sudbury Historical Commission 2007 Goals.

**2007 Annual Town Meeting Articles - Amendment to Sign Bylaw - Temporary Signs**

Ms. Kablack distributed to the Board, for informational purposes, a letter of approval, which the Town Clerk received from the State's Office of the Attorney General dated May 14, 2007, for the amendments to the Town's sign bylaws as adopted at the Town meeting. The letter highlights the need to clarify which Town signs need a permit.

**Proposed Chapter 40T Legislation**

Ms. Kablack distributed to the Board, for informational purposes, a summary of the proposed legislation which would provide municipalities a local option to establish a self-taxing mechanism to fund public services, acting on petition of property owners.

**Maillet Estates Subdivision - Update**

Ms. Kablack reported that Robert Abrams has informed her that an agreement has been reached between the abutting property owners and Developer Al Maillet. Given that an agreement has been reached by the property owners, the Board concluded that a decision modification may be unnecessary. Ms. Kablack will take the input of the Board under advisement and communicate accordingly with all parties.

**Upcoming Planning Board Summer 2007 Meeting Schedule**

The Board reviewed upcoming summer vacation schedules as available.

- Mr. Poch will be unavailable June 27th, and August 13-August 24th.
- Chairman Fee will be unavailable July 25th.
- Mr. Sziabowski will be unavailable the last two weeks of August.
- Mr. Hunter will be unavailable the last week of July and the first week of August.

Ms. Kablack asked Board members to review their calendars and submit vacation dates as soon as possible so that a summer meeting schedule can be finalized.

The Board will meet in June on June 13 and June 27, 2007.

Chairman Fee adjourned the meeting at 9:30 p.m.