

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

At 7:30 p.m., Chairman Fee called the meeting to order.

### **Minutes**

On motion duly made and seconded, it was unanimously

VOTED: To approve the regular meeting minutes of January 21 and January 29, 2009.

### **Zoning Article for 2009 Annual Town Meeting - Accessory Dwelling Unit Bylaw - Discussion**

At 7:30 p.m., Chairman Fee opened discussion regarding the Accessory Dwelling Unit Bylaw zoning article proposed for the Annual 2009 Town Meeting. He reported that, last night, the Board of Selectmen voted to support this article in the Town Warrant. Chairman Fee further reported that he and Ms. Kablack attended a recent Zoning Board of Appeals (ZBA) meeting where the article was discussed. Chairman Fee summarized the ZBA's position as believing that any loosening of the current bylaw restrictions will create uncontrollable occupancy scenarios in a fashion which is not consistent with Sudbury's single-family, residential profile. Chairman Fee and Ms. Kablack reviewed the modifications made to the bylaw, noting that the size of the units had been decreased from 1,200 to 850 square feet to reduce occupancy concerns.

Ms. Kablack stated that, philosophically, the ZBA seems opposed to the proposed article due to the rental aspect. However, Ms. Kablack further noted that the creation of rental opportunities as a way to add diversity to Sudbury's housing stock is one of the primary purposes of the article and is a goal of the Master Plan and Housing Plan. She highlighted that the article, as drafted, is conservative when compared to similar options in other communities. She opined that, in all likelihood, most future units will be utilized for family occupants. Ms. Kablack later noted that the Sudbury Housing Trust, the Selectmen, and the Council on Aging support the article.

Ms. Kablack has continued discussions with the Assessor's Office to pursue proper assessment of values for such units. Chairman Fee asked if there is an established formula used to increase a property's assessment. Ms. Kablack stated that homes are currently inspected for this purpose every ten years, and that dollar figures are assigned to

certain items noted, i.e., \$12,500 for an extra kitchen, \$10,000 for an extra full bath, etc., but that there is no surcharge for accessory units.

Mr. Morely opined that the units will provide income value and should be assessed accordingly.

Ms. Kablack noted that in the future, when a Special Permit is issued for an accessory dwelling unit, the Assessor's Office will receive a copy of the Permit so that the Assessors are aware of the unit, and property valuations can be done as early as possible. Chairman Fee asked if rental information can be collected to factor into the assessment, as is done for commercial properties. Ms. Kablack will further research this, however, it seems unlikely for residential properties. Ms. Eggleston noted that the rental income may not be as relevant to property taxes as it is to income taxes.

Mr. Poch noted that these units could support the concept of affordable housing if an incentive unit were made available for a lower rent to a senior citizen or veteran, and thus be assessed a lower property tax than those which receive a market rent. However, Ms. Eggleston noted that there is still the consideration of the net cost of services provided by the Town to the renters. Mr. Morely stated that he does not think the Town should be micromanaging the rental income aspect of these units. The eventual conclusion reached by the Board was that, although it can advocate for new housing opportunities with this bylaw, assessments are not within its jurisdiction.

Ms. Kablack shared a comment from last night's Board of Selectmen's meeting, noting that presently, there are no provisions by which a single-family homeowner must abide if, and when, he/she chooses to rent their property.

Ms. Eggleston stated that the Town's Housing Plan supports rental properties. Ms. Kablack agreed that this article is reflective of both the Town's Master Plan and Housing Plan. Chairman Fee concurred, noting that there are few opportunities for the Town to create new affordable housing situations, which this article accomplishes in a very small, discreet manner, with no necessary appropriations and no additional buildings.

Mr. Morely opined that the article should be presented at Town Meeting as very similar to what is being done in similar communities such as Lincoln and Concord, and that it helps to diversify the housing stock in a constructive manner, especially during these financially-challenging times.

**Public Hearing: Zoning Article for 2009 Annual Town Meeting  
Accessory Dwelling Unit Bylaw**

At 8:00 p.m., Chairman Fee opened the Public Hearing regarding the proposed Accessory Dwelling Unit Bylaw 2009 Town Meeting Warrant Article. He read the public notice

which was duly published in the *Sudbury Town Crier* on January 22, January 29 and February 5, 2009, and abutting Towns, MAPC and DHCD were duly notified. However, Ms. Kablack reported that the Public Hearing was not posted 14 days prior at the Town Clerk's Office as required by law. Consequently, the hearing will be re-posted and an additional Public Hearing will be scheduled for March 11, 2009.

Building Inspector James Kelly noted for the Board his concerns regarding Section 5570, of the Draft Warrant Article, which Ms. Kablack also recommends be deleted, so that all units will require a Special Permit. Mr. Kelly also expressed concern for Section 5565 regarding re-certification. He is concerned that when a property is sold that restrictions will not be overlooked. Mr. Kelly asked whether a deed restriction could be required as a mechanism to ensure that future owners of properties with these units are aware of the units. Chairman Fee clarified that, although the Special Permit is not attached to the deed, it will be identified through the title search process.

Mr. Morely noted that Section 5530 should include mention of a building permit needing to be issued by the Building Inspector. Mr. Kelly believes that a building inspection should also occur upon the transfer of ownership. Ms. Kablack will revise the language of Section 5550 accordingly.

Mr. Hunter asked if a homeowner decommissions a unit after sale of a property, when would the property taxes be re-assessed accordingly. Chairman Fee and Ms. Kablack responded that the issue is not the concern of the Planning Board. Furthermore, a citizen could follow normal procedures to file for an abatement. Mr. Morely suggested that the bylaw language specify that a re-inspection by Mr. Kelly would also be required upon decommission of a unit.

Sudbury resident Dan DePompei, 35 Haynes Road, presented the Board with copies of questions he has regarding the article. He stated that he supports the article, especially for the use of housing an aging parent. However, Mr. DePompei has concerns about non-family member rental possibilities and the subsequent impact on the Town's budget for required services. He asked if the Town's two school committees and/or the Town's Budget Review Task Force Cost Reduction Subcommittee have endorsed the article. Mr. Morely stated that the Planning Board has considered these issues and revised the size of the unit to 850 square feet based upon its deliberations.

Mr. Morely asked under what circumstances could a Special permit be denied. Ms. Kablack responded that Section 5529 has been revised to denote that all of the Special Permit criteria must be met.

Mr. DePompei stated he has lived in Sudbury 33 years, and he is concerned that setback guidelines to adjacent lots will not be enforced. He has seen accessory buildings built within six feet of other properties. Mr. Kelly confirmed that such structures do exist in Sudbury because at one time, detached structures could be built five feet from the rear or

side of a property. A brief discussion ensued regarding the grandfathering of such structures. However, Chairman Fee noted that, as soon as a change of use is requested, such structures are no longer grandfathered. Ms. Kablack concurred, stating that the structures would be required to meet current setback requirements. Mr. Kelly suggested that Section 5523 be revised to replace the word "current" with "conforming." Mr. DePompei suggested that Section 5523(3) be deleted and that it be replaced by, "the detached structure meets the same minimum setback requirements that apply to the primary residence in the district in which the structure is located. Existing structures that do not meet these setbacks will not be grandfathered under paragraph 2410 of the Zoning Bylaws." Chairman Fee recognized the recommendation as a valid point and suggested that Ms. Kablack incorporate Mr. DePompei's first sentence into the article and that she rework Mr. DePompei's second sentence for possible inclusion as well.

Mr. DePompei further suggested that Section 5529 include a statement that "No driveway or access to a way shall serve more than two dwellings, accessory or principal." Ms. Kablack stated that a similar provision already exists which limits common driveways to no more than 2 dwellings.

Additionally, Mr. DePompei stated that Section 5566, as written, appears to provide for waivers of waivers, thereby negating all restriction parameters previously established. Ms. Kablack clarified that the draft has been revised so that only Sections 5522 and 5527 can be waived. A brief discussion ensued regarding the need for flexibility regarding the size of the units. Mr. Morely suggested that the language be revised to denote that the size requirement can be waived due to constrictions of the existing structure. Mr. Poch agreed, stating that a waiver should not be permitted on new construction. The consensus of the Board was that the language should reflect that certain size restrictions could be waived due to physical constraints of the existing structure, however, under no circumstances, would a waiver be granted for new construction if plans exceed 850 square feet.

Ms. Eggleston asked Ms. Rust if data exists analyzing how many children might become occupants of these units. Ms. Rust responded that data which is available for two-bedroom, affordable-housing units suggests that there are 1.3 pupils per unit [Editorial Note –Ms. Rust later reported to the Planning Board that this figure should be changed to 0.5 children/unit].

Mr. Hunter asked if Section 5520 should specify whether an accessory dwelling unit can be created in addition to another existing unit. Ms. Kablack noted that Section 5524 denotes that only one unit is allowed per building lot. Chairman Fee further clarified that, if a homeowner currently has an in-law apartment and sought to create an additional accessory dwelling unit, the request would not be approved.

Sudbury resident Richard Kurth, 113 Haynes Road, stated that he read the proposed bylaw article on the Town website. Ms. Kablack noted that revisions have been made which are not yet reflected on the website. He asked if the primary residence requesting an additional accessory dwelling could be within a subdivision or condominium. Ms. Kablack noted that Section 5561 states that there is no conveyance of the accessory dwelling unit from the primary dwelling. Chairman Fee further clarified that, from a legal standpoint, who holds title to the dwelling would be of primary importance, noting that the accessory dwelling cannot be separated from the title of the primary lot.

Mr. DePompei highlighted that mobile homes would not be permissible as an accessory dwelling in a detached structure.

Mr. Kurth questioned what the benefit is to residents of such units. He also questions whether senior citizens will be able to financially handle the necessary costs to renovate their homes to accommodate such a unit, and whether they will be able to afford the increased property tax assessment. Given the number of revisions suggested this evening, Mr. Kurth wondered whether the bylaw article will be ready for presentation at Town Meeting. Chairman Fee responded that he and Ms. Kablack can finalize the article language for publication in the Town Warrant in the next few weeks and there will be another Public Hearing on March 11, 2009.

Mr. Kelly suggested that Section 5527 a. and b. be eliminated.

Ms. Rust reiterated that the article has been written conservatively when compared with similar bylaws in other communities. She cited that 4% of Lincoln's housing inventory includes such units, accounting for a total of 80 out of 2,200 properties. Mr. Morely recommended the inclusion of this information in the Board's report to inform the public that this has been done for a long time in locations such as Lincoln and Concord, with no adverse consequences.

At 9:35 p.m., Chairman Fee thanked Mr. Kurth and Mr. DePompei for their thoughtful input to the discussion, and

On motion duly made and seconded, it was unanimously:

VOTED: To close the Public Hearing regarding the Accessory Dwelling Unit Bylaw zoning article proposed for the Annual 2009 Town Meeting.

### **Zoning Article for 2009 Annual Town Meeting - Stormwater Bylaw - Update**

Chairman Fee announced that, last night, the Board of Selectmen also voted to support this article in the Town Warrant.

Ms. Kablack briefly reviewed the thresholds for general permits, stormwater permits and exceptions for the bylaw as presented on pages 6, 7, and 8 of the draft. She highlighted a requested revision by Conservation Coordinator Debbie Dineen on page 8, noting as a "Prohibition," the use of coal-tar based driveway sealants on any impervious surface. Ms. Kablack does not recommend the inclusion of this prohibition in the bylaw.

Ms. Eggleston opined that she is undecided as to whether the driveway sealant issue should be addressed within the bylaw versus through public education. She stated that she is inclined to believe this issue would better be addressed through education. Ms. Eggleston questioned if the prohibition of the product should be included as a condition of every permit. She also stated that "green" alternatives to the product need to be pursued.

Ms. Kablack further stated that Town Counsel Paul Kenny has advised that such a prohibition would be difficult to enforce.

Chairman Fee suggested that it could be noted in the regulations that one condition the Board might impose would be the prohibition of coal tar. Ms. Kablack and the Board agreed that Ms. Dineen's recommendation belongs within the regulations and not within the bylaw language.

Ms. Kablack stated that Selectman Drobinski provided comments regarding the draft bylaw, which she will share with Ms. Eggleston to further clarify the article language. Chairman Fee stated that he will meet with Ms. Kablack on February 13, 2009, to refine both bylaws for publication in the Town Warrant.

#### **Miscellaneous**

#### **Preliminary Far Hills Subdivision - Brimstone Lane - Update**

Ms. Kablack distributed to the Board copies, for informational purposes, of a letter dated February 11, 2009, from Town Counsel Paul Kenny responding to the applicant's attorney, David Wallace, regarding the Planning Board's denial of a preliminary plan dated December 10, 2008.

#### **Articles for 2009 Annual Town Meeting Warrant - Update**

Ms. Kablack provided the Board, for informational purposes, a draft list dated February 5, 2009, of all articles to be accepted for the Annual Town Meeting Warrant.

#### **Upcoming Planning Board Meeting Schedule**

The Board's next meeting is scheduled for March 11, 2009.

At 9:55 p.m., Chairman Fee adjourned the meeting.