

PLANNING BOARD MEETING MINUTES

January 25, 2018

PRESENT: Elmer Clegg, Steven Strojny, Jeanne Azarovitz, Lou Gallo, William Grant, Sandra Goldstein, Elizabeth Brown

ABSENT: Daniel Doucette, Robert Gendron

STAFF: Coreen Moore, Jennifer Copeland

PUBLIC: James Mulvey, Alec Joyce, Bob Prophet, Steve Ballentine, Don Nagle, Rose Kazaryn, Brian Kuchar, Victor Gross, Wendy Roth, Susan DiRubio, D. Dimmick, Michael Blanton and other members of the public

Ann Gutterson, Recording Secretary

Chairman Clegg called the meeting to order at 7:00pm.

81P: 150 Red Brook Harbor Rd. 2 lots.

Zac from Bracken Engineering: This was before you in July, they have a potential buyer and they don't want all the land so swapping 12,000sf back to the original lot.

Mr. Grant made a MOTION to approve. The MOTION was seconded by Mr. Strojny with all in favor.

Request for Temporary Occupancy: Dave Foster. 395 Old Plymouth Rd.

Dave Foster: It's a new building, just about done and received my signoffs from the Town. The outstanding items are all outdoor related. We started in August, weather held us up. The rain gardens, fence, landscaping and top coat/stripping. My business is landscaping design/contracting so it will be more than what is required and look nice. The temporary fence parallel to the road is going to be done next week.

Mr. Gallo: I visited the site last week, all utilities and stormwater are done, the binder is down. He does good work. Don't think we need a bond. MOTION to approve a temporary occupancy permit. The MOTION was seconded by Mr. Strojny.

Mr. Strojny: Why do we need to sign off?

Coreen: Whenever you have a project you need to sign off that it meets your conditions, plans, etc. so that if there is an issue down the line...

Vote: All in favor.

Dave: It's been a pleasure to work with the Town.

Public Hearing for Amended Site Plan Review/Special Permit #05-2014C: Waterhouse Properties LLC. 124 Waterhouse Rd. For a grading change, access drive and increase to building by 990sf.

Levon: We got approval last year and built the parking lot with stormwater and septic. Had to add a bit of width to the service bay, that's why the additional square footage. The radius of the turn changed and so did grading to minimize impact on the cars. Allows an egress point for better flow, also was suggested by the Fire Dept. We will send the new radius turn to DC Pelonzi.

Mr. Strojny: I walked the site, the changes are minor in nature and will create a better flow of traffic. Efficient use of space. Entering the site there is a gradual topographic change, will that necessitate a stormwater change?

124 Waterhouse Rd. Cont'd:

Brian Kuchar: The biggest impact in grade change is coming into the service area. There is more than enough capacity for any water for over a 25 year storm. The overall increase of impervious coverage is minor and some gravel drive out to allow for fire access. We added landscaping islands.

Chairman Clegg: It dips down at the entrance, still the low point?

Brian: Yes.

Mr. Strojny: New cut through is a 90° turn, can a truck make the turn? Would need a letter from the FD saying the turning radius is ok.

Brian: We have discussed with the FD and they've seen the early renditions. The Cape Cod berm is a mountable curb. Agree could do better. They haven't looked at the 90° turn yet. Would only need to do that to exit the site. It's clunky but it works, can drive over the berm.

Chairman Clegg: Your property only has one entrance/exit?

Brian: Two driveways wasn't advisable by a traffic standpoint.

Mr. Strojny: They pushed the radius out, I'm certain it will work. MOTION to approve subject to the following conditions:

- Before the building permit is issued, a letter from the Fire Dept. stating the turning radius is ok with them must be received.

The MOTION was seconded by Ms. Azarovitz.

Chairman Clegg: Trying to tighten up delineation of process of hearings, ask to refrain from making motions until we're sure there are no other fact finding questions.

Levon: The expansion is all in the service area, still keeping 8 bays. This allows one big door and has a common entrance/exit instead of individual doors.

Mr. Grant: Is the problem of the car carrier trucks parking in the road fixed?

Levon: We alerted all the transport companies we deal with. Not they all pull in to unload. Once in a while some park in the road and we go tell them to pull in and they back in.

Chairman Clegg: What is the primary use of the new lot?

Levon: All our new car inventory is there. Pre-owned are in the front of the building and by customer parking on the side.

Bob Prophet, Bourne Water District: When we got this, that parking lot was supposed to be down grade. Nothing was specified about pavement. Now a 20' wide utility easement that is now paved over. When 12' of plastic water main breaks, it will take out every car in the lot.

Brian: There is also a gas line in that easement. We believe measures have been taken to protect the water line. It was always intended to be paved.

Bob: It's on the loop which is the main connection to Brookside.

Coreen: Purchased the property from Brookside, known fact. If the line goes, he'll have to dig it up and repave. Can put parking/drives on it, just not a building.

Bob: If the line goes, Bourne Water is not responsible.

Chairman Clegg: If the line goes, the Planning Board isn't responsible.

Mr. Strojny: If there is a problem with the water line, Levon will have to deal with it.

Roll call vote as follows:

Mr. Strojny – yes

Mr. Grant – yes

Ms. Goldstein - yes

Mr. Gallo – yes

Ms. Azarovitz - yes

Ms. Brown – yes

Mr. Clegg - yes

Public Hearing for Site Plan Review/Special Permit #10-2017: Good Builders. 21 Foster Howard Rd. For a 7,000sf building with contractor bays/offices.

Steve Good: This will be 6 bays, typical contractor building.

Chairman Clegg: The lot has frontage on Foster Howard and 28A, Any entrance on 28A?

Steve: Yes. Already have approval from MA Hwy.

Ms. Brown: We'll need a copy of the curb cut approval. It's not in the Water District. There is an existing building nearby with a similar setup. No residential abutters, but some visual impact to them.

Steve: The clearing on 28A will be 20-25' for site line. It's almost all wooded area. The State wants as much woods as possible to remain. They gave me site lines, we plan on leaving the rest. Have a thorough landscape plan. The site moves between 32 and 33 grades, the end lot will need to get done when that lot gets developed.

Ms. Brown: There are two handicap spots, drainage meets requirements. Runoff is directed to leaching basins.

Steve: The last plan you have should have the radius on there. On 12/29 we sent to the Fire Dept. by email. Met the requirements of Chapter 18 CMR, copy of Tier 1 docs.

Coreen: You already have approval for the curb cut? Usually the state doesn't approve until the Town does.

Steve: The State sent a list of 3-4 things they wanted. Trees will be removed along 28A for a large radius.

Coreen: It's an 80' right of way.

Chairman Clegg: The setback is about even with the width of the pavement. Can be setback to shield the building from 28A.

Steve: Anything not disturbed will be landscaped.

Jen Copeland: There is almost double the amount of required plantings.

Ms. Brown: Cypress, white pine, forsythia, spruce, and flowering pear.

Coreen: If planted according to this plan, will look nice.

Ms. Brown: What type of fencing will be around the drainage area?

Steve: Chain link and will be very heavily shrubbed. Would like not to put in the fence.

Ms. Goldstein: How about a cupola on top to reflect agricultural barn look. Lessens the utilitarian look. Would like to add as a condition. Will there be offices also?

Steve: If they want one they can have an office, but I don't expect any. If we do an architectural roof (shingles) we can do the cupola, I would prefer a green metal roof and a cupola would lose something.

Ms. Goldstein: 15 Long Hill is a metal roof and has a cupola.

Chairman Clegg: Make it a condition and come back for a waiver if don't want it.

Ms. Azarovitz: will it be gated off?

Steve: No.

Mr. Grant: Drainage basin on the plan?

Steve: We are dealing with all the water on site.

Mr. Strojny: Cupola with shingles, it's a bad precedent to make someone add architectural features. In the future I'd be hesitant to tell what features make a building attractive.

Chairman Clegg: Some say the design of McDonalds on MacArthur Blvd makes it more cape cod like. People are sensitive about a cape cod appearance.

Ms. Goldstein: I disagree, beauty is in the eye of the beholder and we don't have any say. Get the Design Review board to weigh in.

Chairman Clegg: They are only for downtown. I think we have the right, public may say differently.

Ms. Azarovitz: Aesthetics of a metal roof are pretty common off cape. Don't necessarily see cupolas on barns.

21 Foster Howard Rd. Cont'd:

Ms. Goldstein: That part of 28A, there are a lot of bogs and agricultural area. THE other roof is maroon or grey and fits the transition, softens the industrial look.

Alec Joyce: I support this.

Jim Mulvey: How is the parking and will there be overnight parking?

Ms. Brown: The parking is adequate to the bylaws. Don't know why they would use overnight parking.

Steve: There is a garage across the street with cars parked 24/7.

Bob Prophet, Bourne Water District: We met with Mr. Good. Water will be off Foster Howard.

Ms. Brown made a MOTION to approve subject to the following conditions:

- A site asbuilt must be submitted prior to an occupancy permit
- Curb cut approval by MA Hwy
- Tier 1 docs submitted to the Fire Dept.
- Adjust roofline to include a cupola
- Water off Foster Howard Rd.

The MOTION was seconded by Mr. Grant.

Ms. Goldstein: Where is the curb cut to the housing development?

Steve: The development abuts the next lot over.

Mr. Strojny: The cupola, so he has to do it no matter what kind of roof?

Chairman Clegg: If he wants relief, he has to come back.

Steve: I'm 99% certain I'm going with a green metal roof. You still want a cupola? I will build it myself. I would prefer it be a suggestion not a requirement.

Mr. Stronjy made a MOTION to amend to remove the cupola item from the motion. The MOTION was seconded by Ms. Azarovitz.

Mr. Grant: It's purely an aesthetic item. Don't know if we have the authority, we can encourage. Agree not a good idea.

Vote on amendment:

Mr. Strojny – yes

Mr. Grant – yes

Ms. Goldstein - yes

Mr. Gallo – yes

Ms. Azarovitz - yes

Ms. Brown – yes

Mr. Clegg - yes

Main Motion as amended:

Mr. Strojny – yes

Mr. Grant – yes

Ms. Goldstein - yes

Mr. Gallo – yes

Ms. Azarovitz - yes

Ms. Brown – yes

Mr. Clegg - yes

Public Hearing for Special Permit #06-2017: Cont'd from 1/11/18: 1077 County Rd. Rose Kozaryn Living Trust.

For more than four horses, indoor riding arena and associated site work in a Water Resource District.

Chairman Clegg: The only hearing we've had on this was on 9/14/17.

Don Nagle: Response to comments on 1/10/18. Section 3 agricultural exemption. Some technical issues without furthering debate, this proposal and therapy farm actually falls under educational non-profits. Also we included a business plan as requested. O&M plan of activity, revised plans include the barn, reduced size, 17 parking spaces, added a trailer pad for manure storage, port-a-potty location identified. Today I submitted a letter in response to the 1/22/18 town planner memo.

Don: Legal issue. ENP category of section 3 of the Dover Amendment. The Town Planner memo said educational use is the dominant use. The Dover amendment addressed this issue. Purpose must be predominantly educational. Horse therapy is intended to provide therapeutic value with handicap kids, extensive case law on what is educational. Very broad. Fully within the scope. The purpose is predominant, not the use.

Chairman Clegg: You're saying the information you provided us shows CLR (Candy Lane Ranch) as an educational organization. What are the key components that make it an educational operation?

Don: Article 2 – organization, paragraph 1. Did case law research, suggest priority and predominantly is an educational use.

Chairman Clegg: Which qualifies it to be a 5013C?

Don: Yes. It's certified as such.

Chairman Clegg: Ever see a 5013C that didn't include that statement?

Don: Sounds like standard language. Horse therapy makes this unique.

Chairman Clegg: Describe how that wording makes CLR an educational use. What you read is in every 5013C.

Don: Not boiler plate. Paragraph 1 after the first two sentences. "find and provide therapeutic..." very specific to what they do. Suggest this puts that issue to bed even if not the case, if predominant use on the property must be educational. Horse therapy is predominant compared to the residential use.

Square footage as per the assessing card: The property is 92,242sf (2.11 acres) with 2,300sf residential.

Chairman Clegg: The portion of the lot for residential is merely the footprint of the houses?

Don: Yes.

Chairman Clegg: You're saying that what's delineated for residential is the footprint.

Don: Vast majority of the property is used for horse therapy with the driveways being common to both uses.

Chairman Clegg: Should parking spaces be in there?

Don: Take all the residential use, case law, if take the farm house out of the farm, defeat the purpose of a farm. Walpole case analogy. No longer arguing agricultural. Now educational. Doesn't use predominant/primary in educational definition. The primary purpose of the organization must be educational, non-profit. Fully within the scope of the Dover Amendment.

Chairman Clegg: CLR qualifies as educational organization for purposes of educational exemption from zoning. We should be seeing if the original purpose is educational and shouldn't be overlaying primary use of the property. Very complex case. Two segments: first we have to decide if the applicant qualifies for educational organization for exemption from the zoning bylaws. Focus on that first. See if we can get all the dialog out of the way. If the Board feels it meets the exemption, then we continue.

Don: If exempt from local regulations then what do we really need to talk about? Agree being subject to Special Permit requirements. Accommodate reasonable regulations. Should not be unreasonably regulated.

1077 County Rd. Cont'd:

Chairman Clegg: Water Resource District, we have the right to impose conditions that protect the Town.

Don: I think some things are beyond our purview.

Mr. Grant: Dover amendment is subject to reasonable regulations, etc. Threshold issue. I don't question that CLR is educational. You say broadly construed. I understand your argument. We look at the parcel and the use. Two dwellings, a large barn with office and weight room above, 2 7'x7' sheds (one held construction equipment) and a corral. The barn related but I view as a separate use. Use and enjoyment, non-inclusive-lease page 1 agreement paragraph 3. Rose originally said agricultural, now it's educational. Very narrow view to say because a therapeutic/educational use in back and an educational organization as CLR.

Don: The Dover Amendment in order to qualify for exemption. Can we operate in a residential zoned part of town? Yes because of Dover. Legal scope of amendment. Riding barn originally approved as agricultural. Once we get over threshold that can be addressed by the Board then look at reasonable regulations. Agree with you on that. Works and can be managed well. The disagreement is over the legal, predominant purpose of the organization. This activity is done right, I think we've met that.

Mr. Grant: Is this entitled to exemption? If it does not apply, the entire context of our review changes. Don't have a lease for the entire property, just a portion. Educational use isn't sufficient to qualify for Dover.

Chairman Clegg: You used "we" then used "organization" referring to CLR?

Don: Yes.

Chairman Clegg: We received a copy of the Regis case from the abutter's attorney. Page 4-5 good lessons.

1. Weston Planning Board found with proposition we didn't think we have jurisdiction to make decision and rejected the application. Judge said, yes you do. You have responsibility. We have to make that decision.

Been looking at the property and it goes back a long ways. 1900 house, 1990 second larger residence. 10+ years later a barn added. Single lot is already built out under current zoning. Fact: It was residential all these years and now they want educational exemption on the whole property.

Mr. Grant: Classroom is now exempt. Not use of this land has been used for it in the past.

Ms. Brown: Non-profit purpose exists outside of this physical location. Then need a place to do it. Not necessarily linked to this physical location except by necessity.

Chairman Clegg: CLR has a lease to use some of the property. Invoke an exemption (Dover) on property not owned by the applicant gives me pause.

Don: Dover amendment or not- Part 1.

Chairman Clegg: Who has to qualify? The property does not just because they have lease rights to use a portion of it.

Don: What I'm hearing is it will overburden that property. Slipping into Part 2. Dover - purpose of organization, activity must be prejudice. Therefore qualifies under Dover. Second part addresses how work on that land. Suggest deem this organization to be in the scope of Dover. Proposed use of property with some if it exempt. Conducted in a reasonable manner with no burden on neighbors.

Chairman Clegg: Need to wrap up, don't have time to open to abutters.

Mr. Strojny: Maybe continue to its own date?

Mr. Grant: What if we decide Dover doesn't apply to property tonight, would it aid you?

1077 County Rd. Cont'd:

Chairman Clegg: Can't vote without public input. I owe an apology, we should have had you back without anything else on the agenda. February 8 or 22nd?

Don: The 8th.

Mr. Grant made a MOTION to continue to 2/8/18. The MOTION was seconded by Mr. Strojny with all in favor.

LCP: Appointment of sub-committee.

Chairman Clegg: We can only use Board members for a subcommittee. I propose a sub-committee of 4 members supported exoficio by Coreen and Ann as secretary but we do have money for outside help if needed. I would like Mr. Strojny to lead, with Ms. Brown, Ms. Azarovitz and Mr. Doucette on as well. Each has strongly expressed interest. They will take charge of the LCP and bring it back to the Board for periodic review.

Mr. Grant made a MOTION to form the subcommittee. The MOTION was seconded by Mr. Strojny.

Jim Mulvey: This is a tremendous undertaking.

Chairman Clegg: They all understand. We are updating, not inventing a new plan. Estimate 12-15 months.

Vote: All in favor.

Planning Board preliminary project review for the Commercial Wastewater Management Sewer Allocation Policy.

Mr. Grant: This was all discussed at the last meeting. MOTION to approve and submit to the Sewer Commissioners for their next meeting. The MOTION was seconded by Mr. Strojny.

Ms. Brown: Can this be adjusted as we use it? Yes.

Vote: All in favor.

Mr. Strojny made a MOTION to adjourn. The MOTION was seconded by Ms. Azarovitz with all in favor. With no further business before the Board, the meeting was adjourned at 9:21pm.

Respectfully submitted,
Ann Gutterson