



**TOWN OF BROOKFIELD
OFFICE OF THE PLANNING BOARD
6 Central Street
Brookfield, MA 01506**

Minutes
September 3, 2008
Town Hall

RECEIVED
OCT 13 2008
BOARD OF SELECTMEN

Members Present: Bruce Clarke
Kermit Eaton
Sharon Mahoney
Mary T. O'Connell
Member Absent: Daniel Leahy

The meeting was called to order at 6:33 p.m.

Police Chief Ackerman. Unregistered Vehicles Issues.
Present was Gary Simeone Zoning Enforcement Officer.

Chief Ackerman noted that the General Bylaws on unregistered vehicles were amended in 2006 to include fines for violations and enforcement by the Police Department. Ms. O'Connell asked if the Chief had any concerns. Chief Ackerman said yes, getting complaints on number of unregistered vehicles on a property, if a neighbor sees it. Ms. Mahoney asked if he could suggest amendment to Bylaw. Chief Ackerman said yes, it needs clarification in certain areas, for instance what constitutes "plain view", use of farm plates on any vehicle, etc. Chief Ackerman would like to the Bylaw to be trimmed down and be more definitive. He asked if any Board members had any input.

Ms. O'Connell proposed amending the Zoning Bylaw to delete the section on unregistered vehicles since the General Bylaws cover the issue adequately. Mr. Gary Simeone agreed and stated the Zoning Bylaw has the same information and is redundant. Ms. O'Connell asked if the Board would agree that it would propose amending Zoning Bylaw Section 4E.6 at some point in the future. Board members agreed.

The Board thanked Chief Ackerman and Mr. Simeone for appearing before the Board.

Business

The Board to have a meeting on September 17, 2008 at 6:30 to work on the proposed Wind Energy bylaw.

Ms. Mahoney asked if the Board had any information as to the O'Clair property on Quaboag St. Ms. O'Connell stated the Zoning Enforcement Officer is working on the project.

Ms. O'Connell asked if Ms. Stawski could email Mr. Simeone and ask for a very brief description of information on O'Clair property, Jessrielle Estates (relative to the required sign), and the Latino property. If Mr. Simeone would prefer to meet with the Board on these issues, he could come to the October 1st meeting.

Minutes for August 6, and August 12, 2008 will be reviewed on September 17th.

Continuation of Public Hearing on Quayside Shores Special Permit application

The hearing continuation was opened at 7:17 p.m.

Present were Mr. Michael Loin of Bertin Engineering, Mr. Donald Zucco of Zucco Construction, Attorney Edmond Neal III representing Zucco Construction, and Mr. Cliff Fontaine representing the Quayside Shores Condo Association. Residents of the condo units and abutters of the property were present at the meeting.

Ms. O'Connell said that the Board has received opinions from both Attorneys, Mr. Neal and Atty. Cantor, Town Counsel of Kopelman & Paige and the Board needs to have a discussion. She suggested that only the Board members speak during the discussion.

Ms. O'Connell has created a spread sheet with comments from both attorneys for the Board to use in making a decision on how to interpret the zoning change voted by the Town on May 9, 2008. This spread sheet was given to all Board members, Mr. Loin of Bertin Engineering and to Mr. Neal by email.

Mr. Eaton stated it was a challenge to sort out the arguments provided by the attorneys. In the process Mr. Eaton spent a lot of time reviewing Zoning Bylaw Section 4 & Section 8. He commented he was confused on Section 4B.1a. More than one dwelling on a single lot is allowed only in accordance with the provisions of Section 8.D, Multi-Family Development. His concerns: 1) dwelling does that mean a single occupant? Or Section 4B.1.c More than one Principal Use on a lot may be allowed by Special Permit issued by the Board of Appeals.

In Section 8D Multi-family developments may be allowed by special permit issued by the Planning Board as indicated in Section 4.D. (Use Regulations). Mr. Eaton noted the wording of 8D2. "The Site Plan for multi-family dwelling shall be so designed that access via minor streets, otherwise servicing single-family homes, is minimized." Mr. Eaton feels the use of the word dwelling in the singular is ambiguous. In this situation he would err on the side of the applicant.

Ms. Mahoney feels that the Planning Board in making a decision is trying to avoid any future problems. She asked if it is customary to add definitions in the Bylaw.

Ms. O'Connell said yes it is customary to have definitions. In the Bylaw Section 2, definitions are shown for dwelling, dwelling, multi-family, dwelling single-family, dwelling two-family, and dwelling unit.

Ms. Mahoney stated she is having the same problem as Mr. Eaton.

Ms. O'Connell stated a multi-family dwelling is divided into dwelling units. A dwelling has a residential purpose—it is a place where people live.

Mr. Eaton commented again on concerns on Section 4B1.a: "More than one dwelling on a single lot is allowed only in accordance with the provisions of Section 8.D, Multi-Family Development." Does this mean a house? This is significant and needs clarification.

Mr. Leahy asked could it be grandfathered in, since applicant applied for the Special Permit before the Zoning Bylaw was changed.

Ms. O'Connell stated this would be contrary to General Law. We have 2 issues here, we need to interpret the Zoning Bylaw: is it clear that no more than one dwelling structure is allowed on a lot? And, we need to make a decision aside from consideration of the application before us.

Mr. Clarke asked if there is a difference between rental & condo units. Ms. O'Connell said no.

Mr. Clarke then asked how did it come to the attention of the Planning Board that the zoning change is an issue that must be interpreted by the Board. Ms. O'Connell stated at this time she does not remember.

Mr. Leahy stated the Planning Board wrote the amendment in the best interests of the Town to eliminate block housing. He feels the terminology is clear.

Ms. O'Connell's strongest argument is that the law is clear to remove multiple dwellings on one lot. The Town Meeting article included an explanatory note that means that everyone was aware of what the meaning of the bylaw amendment was intended to be

Mr. Clarke stated can he contact the Commonwealth to get some questions asked with the Board being responsible for any fees incurred. Ms. O'Connell said this could take years to resolve. She stated that she felt that the most compelling arguments were made by Town Counsel.

Ms. Mahoney stated the intent was clear and explicit to people of the town who voted on the change. In her opinion she is immensely sympathetic with the applicant. Ms. Mahoney's overall intent would be to agree with Ms. O'Connell.

Mr. Clarke asked Ms. O'Connell how long can we continue this hearing process, negotiate site plan and agreement, and what if a member abstained from voting.

Ms. O'Connell state a Special Permit requires 4 affirmative votes to be approved.

Mr. Clarkes agrees with the intent on the words being clear.

Mr. Leahy asked if we could waive the wording in this case? Ms. O'Connell said no, the Board cannot waive a zoning bylaw like this one. Mr. Leahy said some things can be waived, Ms.

O'Connell said that while waivers are requested for subdivisions, this is not a case where the Board has authority to issue a waiver.

Mr. Eaton stated if the Board finds ambiguity he will side with the applicant. Attorney Cantor's letter states that the bylaw change prohibits more than one multi-family dwelling on a lot... She also notes "It is within the discretion of the Board to interpret the applicability of the Amendment to the Project". If the Board "finds the Bylaws to be ambiguous and interprets the Amendment in the manner suggested by Attorney Neal," Atty. Cantor recommends that the Board consider further amendment so that "the matter may be clarified." Ms. O'Connell stated we should not dwell on the applicant's situation, but rather make a decision on whether is the Zoning Bylaw in Section 8.D.3 clear. Ms. O'Connell supports bringing to the town an amendment to clarify. She is not comfortable writing a Bylaw for a particular project.

Mr. Eaton asked in the decision can we say we were not clear in the wording? Ms. O'Connell stated that the Board should simply make a statement of interpretation.

Mr. Clarke stated none of us thought that this project would be affected by deleting a sentence. Mr. Clarke then asked if Attorney Neal may speak since he may be able to add something to the table.

Ms. O'Connell suggested that if Mr. Neal had new information or perspectives, this would be acceptable, but the Board already has his opinion letter.

Attorney Neal stated he spoke with Kelly Gunnigan of the Attorney General's office about the amendment. She stated a sentence was removed and that was acceptable to the State. Mr. Neal stated his concern is that the amendment left the bylaw difficult to interpret since other sections of the bylaw were not amended. He does not want to see his client Zucco Construction go to court.

Mr. Clarke commented he would like to move forward on the decision.

Mr. Loin from Bertin Engineer asked if he could speak, he stated he feels they were blind sided by not being informed of the zoning change.

Mr. Dominic Amoroso an abutter to the project asked the Board, why is a trial lawyer allowed to speak. As a town resident, he voted to accept the change and feels it was clear.

Ms. O'Connell stated there have been arguments made that there is a grey area relative to this zoning change. Ms. Mahoney agrees.

Mr. Clarke commented the intent was clear. Ms. O'Connell stated that while she regrets the timing, it happens sometimes that unintended consequences result.

Ms. O'Connell asked if the Board was ready to vote on the interpretation of the zoning bylaw change and whether it prohibits more than one multi-family structure on a lot.

Motion made by Ms. Mahoney that the Board find that the Bylaw Section 8.D.3 as amended on May 9, 2008 by the Annual Town Meeting does allow more than one multi-family structure on a single lot. 2nd Mr. Clarke. Mr. Eaton voted yes. Mr. Leahy voted yes. Ms. Mahoney voted yes. Ms. O'Connell voted no. Motion carries 4-1.

The hearing on Quayside Shores Special Permit application will be continued to October 1, 2008 at 7:15 pm

The Board thanked Ms. O'Connell for the spreadsheet she created to the help the Board members make a decision.

The hearing session concluded at 8:42 p.m.

Motion made to adjourn meeting 8:42 p.m. by Ms. Mahoney, 2nd by Mr. Clarke all in favor.

Respectfully Submitted,

Diane Stawski, Clerk for the Board

Minutes approved: 10/2/08