

Leicester Planning Board Meeting Minutes
April 1, 2008

MEMBERS PRESENT: Debra Friedman, John McNaboe, Sharon Nist, William Wright, Jason Grimshaw

ASSOCIATE MEMBERS: Scott Broskey

MEMBERS ABSENT:

IN ATTENDANCE: Michelle Buck, Town Planner

MEETING DATE: April 1, 2008

MEETING TIME: 7:30PM

AGENDA:

- 7:30PM Public Hearing Cont:
HY-Timber Shores Definitive Subdivision, Coyle Engineering
- 8:00PM Public Hearing Cont:
Candy Boutique, Michelle Albrizio, 1065 Main Street
- 8:30PM Discussion, Rezoning Request (Schold/Roberts)
- 9:00PM Public Applications:
A. Road Acceptance, Waterview Estates
B. Road Acceptance, Tracy Estates
C. Whittemore Estates, Lot Release Request
- 9:15PM Approval of Minutes
3/4/08
- 9:30PM Town Planner Report:
A. Zoning Articles (1041 Main & proposed wind turbine bylaw)
B. Request for Comments on Becker College lights
C. Chapel Hill Estates
D. Stormwater Bylaw
E. Vacation Request
-

Ms. Friedman called the meeting to order at 7:35PM

Public Hearing:

HY-Timber Shores Definitive Subdivision, Coyle Engineering

Ms. Friedman said that HY-Timber Shores has requested a continuance of their Definitive Subdivision Hearing to April 15, 2008 at 7:00PM.

Approval of Minutes:

3/4/08

MOTION: Mr. McNaboe moved to approve the minutes of 3/4/2008

SECONDED: Ms. Nist – Discussion: None

Vote: 4 –In Favor / 1 –Abstained (Ms. Friedman)

Town Planner Report:

Chapel Hill Estates

Ms. Buck said the current status on this is not known because she has not been heard anything from the application recently. The last conversation she had with Mr. Papetti was that he seemed to be leaning towards letting the permit lapse. What did come up in the meantime was he was supposed to have been being assessed taxes all along and the only reason he wasn't was he hadn't provided copies of the plan, so the Assessor's Office was not aware of the project.

With the tax issue on the table, she felt Mr. Papetti might let the permit lapse and was suppose to submit a letter. Ms. Buck suggested the Board still sign the extension approval, even though it probably won't be needed, but done just in case the permit doesn't lapse.

Vacation Request

Ms. Buck requested vacation time during the week of April 21st to April 25th.

MOTION: Ms. Nist moved to approve Ms. Buck's vacation request

SECONDED: Mr. McNaboe – Discussion: None

Vote: UNANIMOUS

Public Hearing Cont:

Candy Boutique, Michelle Albrizio, 1065 Main Street

Ms. Buck said comments were received regarding the fire code from the Building Inspector and Ms. Albrizio submitted a narrative regarding the parking. Because there won't be any construction work, it doesn't trigger the requirements for changes related to the handicapped accessibilities or fire protection.

Ms. Friedman asked if there were any issues to allowing vehicles to park right up against the building. Ms. Buck said it wasn't indicated, but typically that is the case.

Ms. Buck asked if there were parking spaces currently right up against the building. Ms. Albrizio said yes.

Ms. Nist asked if the area for drop off and pick up will be clearly marked. Ms. Albrizio said yes there will be signed indicating where that will be.

Ms. Buck said she did speak with the Building Inspector regarding the maximum occupancy issue and he indicated that is determined based on information provided by the owner. The general guideline for that building would be one person for every 15 square feet, which figures out to 24 to be the maximum occupancy for that portion of the building. The parking is more of a limiting factor than the occupancy.

Mr. McNaboe asked if there was another location for parking with large parties. Ms. Albrizio said she would host larger parties at other facilities, such as day care centers.

Ms. Buck reviewed Conditions of Approval. The first page reviewed the Board's findings and addressing compliance with the standards in the Central Business District. The two findings the Board will need to address is regarding that the applicant complied with the condition of safe vehicular and pedestrian traffic on the site and also that off-street parking is adequate for the customer within the proposed use.

Ms. Friedman said #7 under the Conditions, for prior to occupancy. The applicant will install signs at two of the parking spaces indicating those spaces are reserved for tenant parking only.

Ms. Friedman asked if there were any other signs needed.

Ms. Nist suggested a stop sign at the exit drive.

Ms. Buck asked Ms. Albrizio if the two tenant spaces shown on the plan. Ms. Albrizio said Mr. Cleary informed her that he will put those signs in.

Ms. Friedman said this leaves only 6 parking spots. Ms. Albrizio said two of them will be used for the drop-off and pick-up spots.

Ms. Friedman said with two more cars there now, there would not be a drive thru for one entrance and one exit. Ms. Albrizio said those two drop off spots are currently spaces.

Ms. Buck asked if a 15 minutes time limit for drop off and pick up is adequate. Ms. Albrizio said they felt it was sufficient.

Ms. Friedman said the only issue with that would be having cars driving through with people crossing to and from the entrance, could be dangerous.

Mr. McNaboe asked about negotiations with parking at McKenna's Insurance. Ms. Albrizio said Mr. McKenna advised her not to use his lot.

Ms. Friedman asked if employee parking use the spaces as well. Ms. Albrizio said no, she will be allowed to park there [at McKenna's insurance], but the customers will not.

Ms. Friedman said the Board can also look at making more than two spaces 15 minutes as well. If there are only 6 spots available, you don't want 4 spots taken up for long periods of time. Maybe one space should be designated for the parent having the party.

Ms. Albrizio agreed.

Mr. McNaboe asked what the age range of the children would be. Ms. Albrizio said the company advised the appropriate age is 3 to 12.

Mr. McNaboe said through advertising and people are made aware of the limited parking, most people would probably car pool.

Mr. McNaboe asked why this was considered an ideal location for this proposal. Ms. Albrizio said it's not, but unfortunately she has a 4-year lease here.

Ms. Friedman said the big concern is that the starting age is 3 and a lot of people will not drop a 3 year old off at a party.

Mr. Grimshaw said given the circumstances, they will have to.

Ms. Albrizio said the average age is school age, 5 and up. She does not see more than 15 children at any given time, unless it's a day care center and then she would work with them.

Ms. Friedman said the Board can place a maximum number of children allowed or make up a fourth spot for 15 minute parking. It might cause a problem not having spots available for parents that want to stay.

Mr. McNaboe asked how that will affect her business. Ms. Friedman said she will have to advertise it as a drop off only. Ms. Albrizio agreed and that wording will be placed in her brochure.

Ms. Friedman said 4 spots will be marked 15 minutes for drop off and the two spots marked for the tenants. Also the fire lanes will have to be marked no parking; having an entrance only sign placed facing out to Main Street, with do not exit placed on the other side facing in and an exit only sign placed facing in existing to Pleasant Street, with do not enter placed on the other side facing out.

Ms. Nist suggested having traffic flow arrows placed on the pavement, putting a stop sign at the exit onto Pleasant Street and a right turn only sign onto Pleasant Street.

Ms. Friedman suggested just having a right turn only sign onto Pleasant Street and not clogging the area with signs. The Board agreed.

Ms. Friedman asked, other than the parties, how long do people spend in the candy store. Ms. Albrizio said they are in and out. Ms. Friedman said putting 15 minute parking for the other spots, the one next to the building could be reserved parking for the parents of the parties.

Mr. McNaboe asked for the hours of operation. Ms. Albrizio said it will be Thursday thru Sunday, from 10AM to 7PM with the last party ending by 8:30 and people gone by 9PM.

Ms. Buck asked if this will be for 7 days a week 10AM to 9PM. Ms. Albrizio said she would like to be able to keep it opened 7 days a week, but will close at 7PM on Sundays.

Ms. Friedman asked about exterior lighting. Ms. Albrizio said all they have is a front house light at the entrance and that is left on at night. Ms. Friedman asked if that lighting is adequate for the parking lot. Ms. Albrizio said yes.

Ms. Friedman said the parking will self regulate, but felt a maximum occupancy number be noted in the Conditions and suggested the maximum occupancy be set at 24 to include employees, guests, parents & children.

The Board agreed.

MOTION: Mr. McNaboe moved to approve the Condition of Approval with said amendments

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

Discussion, Rezoning Request (Schold/Roberts)

Mr. McNaboe & Ms. Friedman informed the Board that they did a site visit on the proposed properties.

Ms. Buck submitted a revised map outlining both parcels under request. Ms. Buck said the handout distributed to Planning Board members at the last meeting had a mistake on it, because she was using something that was digitized a year ago from the old zoning request. The previous request had the zoning line end at the RA district line and the current request includes the entire Roberts property. On the back side of the new map, she overlaid the properties on a Zoning Map, showing the scale of the request.

Mr. McNaboe said he visited the area from Mt. Pleasant Road to try and get an idea of what that neighborhoods view will be. A lot of the concern given was to do with how much of a buffer there will be between those properties. It seemed the people near the end of the road had less of a buffer than the ones closest to Route 9. He also drove onto the Schold's lot and when looking at the property, there is a good buffer existing there now, but where the work will take place is down further on the lot. The elevation from where he parked his car goes down around 12-feet and he felt it was an adequate amount of a buffer zone. With the added 100-feet of buffer from the property lines, would seem to be an adequate buffer.

Ms. Friedman said you also won't see a lot if there ends up being a 5 story building on that lot. Once this is rezoned, a 5 story building can be placed there.

Mr. McNaboe said compared to what the view is now, is an empty lot. This lot was part of the original rezoning on that area as HB1 and the only reason it wasn't was because of the particular property owner at that time didn't want it.

Mr. Broskey said the elevation slopes pretty good there and that neighborhood will have a pretty good view of what is going on with that lot.

Mr. McNaboe said they will be able to build by right, but a Site Approval will be needed as well. Mr. Broskey asked about the abutter on Rawson Street whose property will be directly affected. Mr. McNaboe said there will be a 100-foot there too.

Mr. Broskey asked how this will affect the wetlands in that area. Mr. McNaboe said that would come under the Conservation Commission.

Mr. Grimshaw asked how this could not be considered spot zoning. Mr. McNaboe said the Board could continue rezoning across the street and then go down Mt. Pleasant Street.

Mr. Grimshaw asked why the Board would want to create a commercial zone and then extend it into a residential neighborhood. Mr. McNaboe said so they aren't left out and just putting up with the commercial development around them. Ms. Friedman said they will have the potential of selling commercial.

Ms. Buck said it is not always cut and dry, the biggest argument against it being considered spot zoning is the zoning across the street. What makes it complicated, because on this side of the street, there were reasons it wasn't rezoned the first time around and this rezoning request is primarily for the benefit of two property owners. This Board will need to decide if the benefit to the Town outweighs the benefit to particular property owners. Do they feel that the zoning proposed is the best long term zoning designation for that area, taking into account the surrounding land uses and characteristics?

Ms. Friedman said this is a tough one, because it can go either way.

Ms. Buck said unlike the rezoning request in the Center of Town where CB fit that lot better; these two rezoning requests are different, one lot is narrow and the other is bigger; one is closer to the Center of Town with an existing building and the other is vacant. There is not a neat fit for either CB or HB-1.

Mr. Broskey said depending on where the entrance will be for this lot, there is limited visibility along that curve.

Mr. McNaboe said they will have to meet site approval.

Ms. Friedman asked because these are two separate parcels, if they were looking to construct more than one structure on a parcel, would that be allowed. Ms. Buck said yes.

Ms. Friedman asked if that was with a special permit or by right. Ms. Buck said by right, but with limits on lot coverage.

Ms. Friedman said another issue here is that the Roberts parcel is only 225 feet wide. They will have a hard time complying with the front and side setbacks, plus a 100-foot required buffer, along with the topography, significantly puts limits on the parcel. Any construction on that smaller parcel would have to have a 100-foot buffer, which no parking or anything can go into that buffer; they would have to meet the entire front and side setbacks, for the placement of any structure.

Mr. Bill Coyle of Coyle Engineering presented a map outlining the rezoning request and reviews it with the Board.

Mr. Grimshaw asked where the benefit to the Town is.

Ms. Friedman said one benefit is that once this is HB-1 it cannot be made into residential lots. One of the problems the Town has is that more and more business zoned properties are being taken up by homes.

Ms. Nist asked Mr. Roberts what his expansion plans were. Mr. Roberts said it will have something to do with cars and/or car repair.

Ms. Friedman asked Mr. Schold's what the site distance is when pulling out onto Route 9. Mr. Schold said there are approximately 500-feet of site distance.

Ms. Friedman asked if that will remain even with the topography. Mr. Schold said yes.

Mr. McNaboe said eventually this will happen 10 to 15 years down the road all of Route 9 will be Highway Business. Right now there is an economic slump, but eventually that will change.

Mr. Grimshaw said there is a lot of commercial property sitting dormant out there right now, which could sell as well.

Mr. McNaboe said once those properties start selling, he does not want to leave these people out of the opportunity to sell commercial.

Mr. Broskey said you are looking at something further down the road and trying to make a decision for people who don't want that.

Mr. McNaboe said he is trying to think about what should be planned for the Town and what kind of development the Town wants along Route 9.

Mr. Grimshaw said the only reason it wasn't done previously was a property owner wanted to farm her land. Mr. Grimshaw asked if the Roberts property was part of the previous rezoning.

Ms. Buck said it didn't go that far.

Ms. Friedman said it didn't include the Roberts property, just the Corey property, which was the house taken by eminent domain. That area was taken out of the rezoning proposal prior to the public hearing stage.

Mr. Grimshaw said this is similar to the situation on Route 56, where the Board was concerned about abutting commercial next to residential and residential next to commercial.

Ms. Friedman said we weren't rezoning that area; it was a site plan that was allowed within that zone. What the Board asked was for them to improve the site plan submitted by reversing it.

Ms. Friedman said the concern with spot zoning and this request being only for two parcels; the Board is looking at two significant size parcels in this request.

Ms. Buck said zoning is always supposed to be in accordance with a plan for the future of the Town, such as the Master Plan. The Board has to judge whether this proposal is in keeping with the Town's Master Plan. Attorney Cove did raise some concern about spot zoning with this proposal and had asked Ms. Buck show the Board this proposal in relation to the current zoning map. He said the question could be raised on Town Meeting Floor and wanted to be prepared to address it.

Mr. Coyle asked if there was case law relative to the size of these parcels, which should be a strong argument, given the size of these parcels. Ms. Buck said there is case law, however, the determining factor isn't always size.

Mr. McNaboe asked if HB was proposed in the Master Plan as going straight through Mount Pleasant.

Ms. Buck said no, the last Master Plan recommended ending the commercial zoning at Burncoat Street.

Mr. Schold said he understood HB-1 was to help the Town with its tax base. They just want to put in a business.

Mr. John Bujak, 30 Rawson Street said he has a concern with any kind of addition Mr. Roberts wants on his property, because it will directly abut his property and there are a lot of wetlands that will affect his property as well.

Ms. Friedman said anything Mr. Roberts proposes will need to meet the adequate buffer of 100-feet.

Mr. Bujak said the realty is that this is an unusable piece of property and it sits approximately 30-feet away from his yard. Anything put in there will leave an open area and a lack of privacy.

Ms. Friedman said HB opens this up, but the property will limit what can go in there.

Ms. Friedman asked for any further comments, questions or concerns; hearing none, asked for a motion.

MOTION: Mr. McNaboe moved to recommend approval of the request of Bill Roberts & Paul Schold to rezone 1323, 1355 and 1439 Main Street from Residential A & Residential B to Highway Business-1 and have it placed on the warrant to go before Town Hall Floor.

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

Public Applications:

A. Road Acceptance, Waterview Estates

Ms. Buck said this is the extension of Fairview Drive where the developer abandoned the project. The surety funds are being used to complete the work. The Highway Department paved the road last spring and a private company has been hired to finish the as-built plans. The plans have not yet been received, although a bill for the plans was received. Quinn Engineering did receive copy of the plans and approved them. Kevin Quinn, the Highway Department and the Road Conversion Committee are recommending acceptance at the Town Meeting. The Public Hearing on this is April 14th, but the Board can make their recommendation and vote tonight for Town Meeting, assuming the office receives the plans by then.

MOTION: Mr. Wright moved to approve Road Acceptance of Waterview Estates pending submittal of the As Built Plans.

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

B. Road Acceptance, Tracy Estates

Ms. Buck said the Road Conversion Committee has decided to recommend acceptance; Kevin Quinn is recommending certain issues outlined be completed prior to Town Meeting and she is recommending having it done prior to the Public Hearing on April 14th. The Board recommended taking no action at this time pending completion of the work.

C. Whittemore Estates, Lot Release Request

Ms. Buck said Mr. LaFlash has requested the release of 4 more lots. There are a few problems. The Conservation Commission has issued a Cease & Desist order on this project and recommended not releasing any of the lots until Mr. LaFlash address the Conservation concerns. The second problem is, with Lot 11 release request. The Order of Conditions require at least a binder course be in place prior to a lot release and although there is a binder course in front of the other three lots, Lot 11 only goes half way. Bill Coyle contacted Ms. Buck and asked if the Board would find it acceptable if the driveway was on that portion.

MOTION: Mr. Wright moved the Board disapprove Lot Release Request for Whittemore Estates on Lots 29, 30, 11 & 12.

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

Town Planner Report Cont:

Zoning Articles (1041 Main & proposed wind turbine bylaw)

Mr. McNaboe said the Selectmen is recommending this not knowing what they are asking for. Ms. Rondeau wants the Business Zone and the reason she wants Business is because the house is currently for sale and most likely has a buyer.

Mr. Wright said he was informed that house is going into foreclosure and will need someone quick to buy it. The only hope she has is some commercial developer coming in and buying it up.

Ms. Friedman said that is the reason why it should not be zoned Business.

Mr. Wright asked if this was zoned Business, can anyone come in and knock down the house. . Friedman said yes. . McNaboe said as well as the neighboring properties.

Ms. Nist said when Ms. Rondeau left the last hearing; she was perfectly willing to go to Central Business.

Ms. Buck said the day after that hearing; Ms. Rondeau submitted a letter to the office that was consistent to the Board’s discussion held. Once she went to the Selectmen, she submitted the second letter.

Mr. McNaboe asked what the actual proposal will be. Buck said there is a public hearing scheduled to rezone that property to CB for April 15th. She has talked with the Town Administrator and said she felt that the Planning Board negotiated in good faith with Ms. Rondeau to a compromise and the Selectmen’s decision to leave both articles on the warrant undermines that. There is a hearing scheduled to rezone that property to CB not B and now the Selectmen placed both on the warrant.

MOTION: Mr. McNaboe moved to disapprove the article on Town Meeting Warrant for the request of Margaret Rondeau to rezone a portion of 1041 Main Street from Residential B to Business (B).

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

Wind Turbine Bylaw

Ms. Buck said when the Selectmen talked about the wind turbine bylaw at their meeting they apparently they requested the Town Administrator to submit three samples to the Planning Board and asked them (the Planning Board) to write a bylaw. Ms. Buck let the Town Administrator know that Selectmen are asking the Planning Board to hold a public hearing on a zoning article this close to Town Meeting, an actual bylaw has to be provided not several examples. Something has to be

filed with the Town Clerk showing what is being proposed. The sample submitted was included in the Planning Board's mailing and is not as bad as some of the other samples provided.

Mr. McNaboe said the sample bylaw places tower height under definitions, which is vague and then goes onto another statement that the tower can be 120-feet in height. Mr. McNaboe asked for an explanation under Definitions, Tower Height; stating, "The height above grade of the fixed portion of the tower, excluding the wind turbine itself."

Mr. Wright said the blades reach the height of the tower. Mr. McNaboe said he assumed that, but does that mean the blades can not exceed 120-feet? Mr. Wright said no, the height above the grade of the fixed portion of the tower, excluding the wind turbine itself.

Mr. McNaboe asked if that means it can go higher.

Mr. Broskey said community wind turbines go between 30 to 60-feet.

Mr. Wright said these would be small wind turbines.

Ms. Nist asked what is considered small. Ms. Buck said 120-feet.

Mr. Wright said these would not be turbines that would power the schools or the Town of Leicester.

Ms. Friedman asked then why is this being looked, if this is not something that can power the schools or Town of Leicester. Mr. Wright said he assumes this is for private individuals to put up on their property.

Mr. Broskey said apparently there are a couple of farm property owners who are interested in putting turbines on their property.

Ms. Friedman said this proposal should be looked at as an entire package, because there will be a turbine proposal in the near future for the schools. Mr. Broskey said it should be within the next year.

Ms. Buck said when the Town Administrator first submitted this request; she felt that it was not thought through thoroughly. Her first question when the issue first came up was what was the intent of the bylaw [residential or commercial]? She learned of the recent discussions in the newspapers.

The newspaper wrote that the Selectmen have two concerns; one being residential windmills and commercial windmills; the sample bylaw only addresses residential windmills. The Town Administrator suggested amending the bylaw at the public hearing.

Mr. Broskey said commercial windmills can go over 200-feet. Ms. Nist said a commercial windmill would be as tall as a cell towers.

Ms. Buck said the Selectmen are asking the Planning Board to rewrite the Windmill Bylaw in a suitable way before Town Meeting on May 5th.

Mr. Wright asked is it supposed to cover commercial windmills as well? Ms. Buck said yes.

Mr. Broskey said this sample bylaw is not suitable for commercial at all.

Mr. Wright said the sample bylaw does not address the foundation; it doesn't address whether it will stand alone or with guide wires; it doesn't address the insurance regulation or electrical codes.

Mr. McNaboe asked what equipment is needed and who will enforce it.

Mr. Wright asked how this bylaw fits under the FAA Regulations, where is that information available and which ones are applicable to this. As for, Electromagnetic Interference, if it is

determined, who determines that and what about pre existing conditions, what is it specifically. This sample bylaw is just too vague.

Ms. Friedman said the Town of Leicester does need a windmill bylaw, but we also need a well-written one. Comments from other Towns have been, yes they have one, but it's not a good one, because it was rushed through Town Meeting.

Another concern that has been raised by Town Counsel was that the Town of Leicester's cell tower bylaw has been held up nationally, as one that Towns want to look towards when writing a cell tower bylaw. When the Town of Leicester comes out with a wind turbine bylaw, people will look towards the Town of Leicester to see how it was written and this Board does not want to give them junk.

Ms. Buck said it also raises legal concerns over being able to enforce the cell tower bylaw in the future, because the gist of the court case the Town won, was based on being able to deny a cell tower on aesthetic grounds. The windmill bylaw should be consistent with that, because essentially they look like cell towers, except they spin and make noise. The Board should tread carefully on this.

Mr. Wright said stated in the sample bylaw, the noise on a small turbine is similar to a refrigerator. Ms. Buck said she viewed the turbine in Brookfield on a windy day and it sounded like the noise a flag makes on a windy day.

Ms. Buck asked if the Board wants her working on this bylaw between now and the public hearing scheduled for April 15th. The Board members said no.

Ms. Friedman said this sample is what was submitted and we will get up on Town Hall Floor and tell them what is wrong with it.

Request for comments on Becker College lights

Ms. Buck said Don Lennerton informed her that Becker College wants to put lighting poles 80-feet high around their athletic field. Mr. Grimshaw said they were reduced from 95 to 80-feet.

Ms. Buck said yes, Mr. Lennerton asked her if the Planning Board wants to comment, before a decision is made by the Mass. Historical Commission.

Mr. Grimshaw said this has been an ongoing issue with Mass Historical and Becker College. He felt the College did make a decent compromise to lower the height of the poles. Aesthetically, you can see the pole and you are not supposed to see the pole from the National Historic District, but you would have to stain to see them in most of the district and he personally felt that was fine.

Ms. Buck asked if the Board had any further comments. Ms. Friedman said she does not have a problem with it. Mr. Wright & Ms. Nist felt they made a decent effort to try and compromise. Mr. Broskey & Mr. McNaboe agreed.

MOTION: Mr. McNaboe moved to adjourn meeting.

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

Meeting adjourned at 10:00PM

Respectfully submitted:
Barbara Knox