

**Leicester Planning Board Meeting Minutes**  
**April 24, 2007**

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

ASSOCIATE MEMBERS: Scott Broskey

MEMBERS ABSENT:

IN ATTENDANCE: Michelle Buck, Town Planner and Barbara Knox, Board Secretary

MEETING DATE: April 24, 2007

MEETING TIME: 7:00 pm

AGENDA:

- 7:00 PM Discussion:  
Chapel Hill Estates Modification (Ben Beale)
  - 7:15 PM Public Application:  
Preliminary Subdivision Plan Submittal, Hytimber Shores (Joseph Hyland)
  - 7:30 PM Public Application:  
Kindred Healthcare at the Meadows (Site Plan Review)
  - 7:45 PM Continued Public Hearing:  
Adaptive Reuse Bylaw (Zoning Amendment)
  - 8:15 PM Discussion:  
Wal-Mart, Amendment to Performance Agreement and bus turnaround update
  - 8:30PM Approval of Minutes:  
2/6/07 & 3/6/07
  - 8:45PM Town Planner Report  
A. Miscellaneous Project Updates
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Deb Friedman, Chairman opened the meeting at 7:00 pm

**Discussion:**

Chapel Hill Estates; Modification (Ben Beale)

In attendance for Chapel Hill were Ray Beale and Ben Beale. Mr. Ray Beale said they have been talking with the present owner discussing purchasing and amending the original proposal. Before moving forward, he would like to know the status of the plans, have they been approved; has the approval been revised and what are the requirements outside of the plans that they have now.

Upon further study of the present plan, the hill is not the best or easiest to develop. The entrance road is very steep and he would like to try and take some of that hill down in areas. This project is a 55 and over development and he sees an older adult having trouble trying to walk up that hill or trying to stop their vehicle at the bottom on a snowy day. He is proposing to redesign the access ways and take down some of the height to the hill.

They are not proposing any more units than originally proposed. He would like to change the design of the units because he does not like the present design with the garages being shown in front of the building.

Mr. Beale is proposing a change in the design; the elevation; the roadway and the buildings.

Mr. McNaboe said what is being proposed is to amend the plan that has been approved by the Planning Board.

Ms. Friedman said there is a difference between amend and modify. Mr. Beale said to modify the plan is probably the correct term, because there will be a lot of changes.

Ms. Friedman asked what the proposed changes are to the entrance/exit ways. Mr. Beale said he would change the slope of the entrance and make a new entrance off of Chapel Street, diagonal to the contours. The West Street access, he would like to eliminate and make another access for the two means of access.

Ms. Buck said there are two questions, one regarding process and the other is asking the Board for any general concerns about a secondary access on Chapel Street. She advised the Board to be careful not to, in effect, deliberate on something that is not actually an application before the Board. For example, the Board should not discuss waiver requests. However, the Board may indicate general comments or concerns regarding Chapel Street.

Ms. Friedman asked where the access on Chapel Street will be located. The Board looked at the plan. The proposal is to keep the original access on Chapel Street; modify the hill making it less steep and make steps and have a secondary egress further down on Chapel Street. If the Board wants, they will keep the West Street access for emergencies.

Mr. Broskey asked about water runoff. Mr. Ben Beale said there would be less runoff than there is now. Every roof will tie into a dry well and the storm drains will have dry wells, with extra deep sumps that will connect to the drywells. The detention pond will be placed underground and grassed over, giving more green space.

Ms. Friedman said she would prefer to see the West Street access eliminated and not impact that neighborhood.

Ms. Buck asked if the Board had any concerns regarding Chapel Street access. Ms. Friedman said it seems better than the minor streets, but sight distances will need to be studied when an application is submitted.

Ms. Buck said in terms of process, Chapel Hill Estates was approved by the Board, but the plans were never signed. The Board waited for months for a properly signed Covenant. When the plans were finally submitted, they were the wrong set of plans.

At the Board's last meeting, they denied endorsement of the plans. New plans were submitted today and if the plans are correct, the Board will be signing what was approved 13-months ago at a future meeting. The water system that is shown on this plan will need to be changed.

Ms. Buck said in terms of the proposed changes, these are very significant; essentially it's a whole new submittal. Given the problems with the previous approval, even if a modification were possible, a new submittal would be cleaner.

The way the bylaw is written, the applicant has the option of getting a special permit at the preliminary plan stage. This has never been done; every applicant has voluntarily chosen to submit a definitive plan so that there is only one hearing and the Board has allowed that.

Ms. Buck suggested the applicant contact the water district to get a better understanding with them, because it's separate municipality from the Town.

**Public Application:**

Preliminary Subdivision Plan Submittal, Hytimber Shores (Joseph Hyland)

Ms. Buck said this has been postponed for now. Hytimber Shores was a small subdivision of about 3 or 4 lots that was submitted a few years ago and was approved. Now the applicant is proposing 7-lots with a slightly larger road with a boulevard. Bill Coyle is the Engineer and he contacted Ms. Buck today and told her that the applicant's attorney believes the project can be built in accordance with an old approval from 1990. The applicant is currently exploring his options before he submits.

Ms. Buck said the Board never rescinded its approval, but that doesn't mean someone can take that off the shelf and build from it. She advised Mr. Coyle that the Town's position is that the old approval is not valid and it's up to the property owner to prove otherwise.

**Town Planner Report**

Chapel Hill Estates

Ms. Buck submitted copies of a letter denying the plan endorsement and on the reverse side is a copy of a letter received from the water district's attorney. The water district is concerned about the Board signing off on a set of plans when the water approval isn't finalized. Ms. Buck said she has not responded to that letter yet, but at this point, the Board has already approved this project a year ago and the plans have to be signed.

Mr. McNaboe asked about how the water availability was addressed during approval.

Ms. Buck said this is the project that the Board spent a year on that specific issue (water availability) and finally reached a point where Town Counsel advised the Board it can be approved, which really can't be undone now. Ms. Buck said she informed the Water Department that the Board will make the new owners aware of the fact that this project doesn't have final water approval.

**Public Application:**

Kindred Healthcare at the Meadows (Site Plan Review)

In attendance were Mr. Robert Murphy and Mr. David Cooper.

Mr. Murphy gave an update and said the architect handling the project and the previous owners didn't get along and the previous owners and new owners aren't getting along, so the lines of communication broke down. It took Mr. Murphy a couple of months to find out who is currently in charge and to reorganize.

The previous person who was handling the construction project passed away, which created more concern that anything that was presented to this Board, would be followed through by the current owners. As of today, that has all changed and he has met with Kevin Quinn, on site, and did some soil testing.

In Mr. Quinn's report to the Board, he asked for additional information relative to the hydrology study and the type of soil, which was done today. What was determined was that the detention basin that was designed is fine, but they need to meet the storm water management requirements. An additional basin is needed for an additional way to infiltrate the water that is necessary for recharge. He is proposing to alter the design to provide a recharge basin, which will be separate from the detention pond.

Mr. Murphy said they did some augering when they filed a Notice of Intent with Conservation around three years ago. Since then, the regulations have changed on Stormwater Management.

The previous owner never recorded the previous Order of Conditions received from Conservation, so now a new filing is required. There will also be a new filing with DEP.

Ms. Friedman asked if they need a continuation. Mr. Murphy said yes. He said they didn't want to file a Notice of Intent with Conservation until they felt confident that the Planning Board was all set.

Ms. Friedman asked how much time is needed. Mr. Murphy said about a month from now. Ms. Friedman recommended continuing this hearing to June 5<sup>th</sup>. Mr. Murphy agreed, but after further discussion, requested May 15<sup>th</sup>.

Ms. Buck said revised plans need to be submitted a minimum of a week before a Planning Board meeting.

Mr. Murphy said most of what they have to provide the Board is justification of design. There are wetlands on the site, but they don't go anywhere, it's not connected to a stream, lake or river, it just puddles at the low end of the site and absorbs into the ground. All the water currently from the site is recharged and does not leave the site.

Ms. Buck asked Mr. Murphy if he will be able to get all his information to Kevin Quinn by May 8<sup>th</sup> and Mr. Murphy said yes.

MOTION: Mr. McNaboe – moved to continue Site Plan Review discussion for Kindred Healthcare at the Meadows until May 15, 2007.

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

MOTION: Mr. McNaboe – moved to extend the deadline to file a Decision until May 18, 2007.

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

### **Continued Public Hearing**

#### Adaptive Reuse Bylaw (Zoning Amendment)

Ms. Friedman called the hearing to order at 7:45PM.

Ms. Buck said the Adaptive Reuse bylaw was adopted in the Fall and at the top of the handouts, within the boxed gray text, it explains why this article is on the warrant. The Attorney General's Office approved the Adaptive Reuse bylaw, but cautioned that the bylaw can't be used until the district is shown on a map, because it's being called a district.

Ms. Buck said her first attempt on correcting the bylaw was to change it from a district to a use allowed by Special Permit. After lengthy conversations with Attorney Cove, it was agreed that the existing bylaw, as written, already says where the district is. It says "AROD is an overlay district superimposed over the town's underlying zoning district". In effect, the district is the entire town and it does not need to be shown on a map.

Mr. McNaboe said so it doesn't need to be changed. Ms. Buck said Attorney Cove recommended that the Board rewrite that sentence to make it more clear as to what is meant and

suggested having the sentence read, “AROD is superimposed over all underlying zoning districts in town”.

Ms. Buck said she noticed that the legal ad is not clearly consistent to what Attorney Cove has suggested, because the legal ad states, “to amend the zoning bylaw to clarify the intent of Adaptive Reuse as a special permitted use”. Because the draft bylaw also has to be sent to the Attorney General’s Office, which has a paragraph about how this is not a district and the town wants to make it a use, Ms. Buck felt this change will confuse the Attorney General’s Office and the Board agreed. Ms. Buck discussed the issue with Attorney Hogarth (from Attorney Cove’s office), and Atty. Hogarth agreed it would be better to postpone action because what was printed in the the legal ad and warrant is different from the solution proposed now.

Ms. Buck said there is no pressing emergency to adopt a change now, because the bylaw as written already addresses the issue; the amendment would be an improvement. She recommended submitting a revised article at a future Town Meeting.

Ms. Buck informed the Board that the Board of Selectmen voted to approve the first two zoning articles and withheld judgment on the other two articles, because they felt there was not enough information. She provided a status update memo to the Board of Selectmen April 23, 2007, which hopefully will address their concerns.

MOTION: Mr. McNaboe – moved to pass over the amendment to Adaptive Reuse Overlay District Bylaw Article at Annual Town Meeting.

SECONDED: Ms. Nist – Discussion: None

Vote: UNANIMOUS

**Discussion:**

Wal-Mart, Amendment to Performance Agreement and bus turnaround

Ms. Buck said Kevin Quinn gave the “okay” on the bus turn around width and Worcester Transit Authority also gave their approval.

Ms. Buck prepared a document to put in writing the Board’s vote of the last meeting to amend the secured performance agreement dated March 6, 2007 by extending the deadline to install the Opticom system at the intersection of Route 9 and 56, from April 30, 2007 to July 1, 2007 (all other terms of the original agreement will remain in effect). Board members signed the document.

**Town Planner Cont:**

Brookside Estates

Mr. Grimshaw stated that he would not vote on this request because he is an abutter to the project.

Ms. Buck said this is a 6-lot subdivision approved in 2003; the deadline for the developer to finish work was May of 2006. Last Fall the Board voted to extend the deadline for completion to May of 2007, but conditionally approved the extension. The conditions stated: “Failure to report the status of work on this project by March 30, 2007, shall be considered Default. If further extensions are requested, the owner must submit such requests, along with an estimate of the cost on remaining work prior to March 30, 2007.” The applicant has done neither.

Ms. Buck said she sent the applicant a letter notifying them of default and requested a current status of the work and the intended time line for completion. The response received asked for a request to extend the project's completion date to March 14, 2008, because they have not completed all the remaining items and they anticipate the start of the final phase by the Fall of 2007.

Ms. Buck said that is a concern because when this was extended last Fall, the Board wanted a specific caution against delay. The notification of extension to Mr. Konan stated "The Board will be reluctant to grant further extensions if no further work takes place between now and extended deadline". That letter is dated November of 2006.

The Applicant's recent letter states that he has no intension of starting work until this Fall, which is an unreasonable request.

Mr. Grimshaw asked what work needs to be completed.

Ms. Buck said the sidewalks need to be put in; the final coat of pavement and a construction status report was never received.

Mr. Wright said if the applicant is waiting until November or December of this year to pave, he will end up with the same problem (not being able to work in the winter).

Ms. Buck recommended denying the request for an extension, because it's not acceptable for the applicant to sit on a project through an entire construction season.

Ms. Friedman said to have the applicant come in before the Board to discuss the new extension request and inform him that the Bond will need to be re-evaluated based upon the amount of work left to do. The amount of the Bond will probably have to be increased if the applicant wants that long of an extension. Ms. Friedman suggested having Quinn Engineering do a site inspection and estimate how much work is left to be done.

Mr. McNaboe asked to have Kevin Quinn also inspect the retaining walls.

#### Open Space Plan

Ms. Buck said the draft plan was received and distributed to committee members.

The next meeting was scheduled for May 1<sup>st</sup>, but only two members have confirmed, so it might have to be rescheduled.

#### Waterview Estates

Ms. Buck said this project is almost done and is presently working on using the Surety. The Bidding requirements have changed and Quinn Engineering agreed to handle that aspect of this. Kevin Quinn will prepare the bid documents and assist in get the Board quotes that comply with the legal requirements. The current plan is to have a private contractor do the drainage work and the Highway Department do the paving.

#### 1141 Stafford Street

Ms. Buck said this is a project the Board approved 2-years ago; the permit expired for failure to commence work; they came in again and the Board approved it again. The current deadline to commence work is June 20, 2007, but was informed that the building being demolished is a historic building. The property owners applied for a demolition permit and were informed it will have to be approved by the Historical Commission; that hearing is on Tuesday, May 8<sup>th</sup>.

It was indicated by a Commission member that the Historical Commission is likely to impose the 6-month delay.

Ms. Buck told the Board she heard that the property owners are angry with the Planning Board for not letting them know about the Demolition Delay Bylaw. There is another issue being that this project is bumping up against the deadline to commence work and the Board maybe faced with what constitutes commencement of work.

**Update on ZBA Applications:**

C40B, 1027 Stafford Street

Ms. Buck said the Zoning Board of Appeals closed the hearing on April 23<sup>rd</sup> and has 40-days to reach a Decision. Ms. Buck will be writing the draft Decision based on a template provided by the Consultant, Edith Netter. The original plan was to have Attorney Cove finish out this process, but the applicant has since agreed to supply more funds in order to keep the same consultant on board.

This has been placed on the ZBA's Agenda for May 21<sup>st</sup> to go over the draft Decision and proposed conditions of approval. Ms. Friedman said this applicant might have to go through the demolition permitting process as with the 1141 Stafford Street project. Ms. Buck said she will look into the Demolition Delay issue (and check on the age of the building), because they might be able to circumvent that, but if they do, it had to have been requested, which has not been done.

Parker Street

Ms. Buck provided an update on the status of the ZBA application. Ms. Buck said the ZBA's Hearing was April 9<sup>th</sup> and at the applicant's request, the hearing was continued to June 11<sup>th</sup>.

Ms. Buck said that at the ZBA hearing, there was a lot of new information discussed that seemed to be unrelated to the original application to the Zoning Board of Appeals, such as a proposal for a gravel road. The Applicant's attorney suggested that the proposal be referred to the Planning Board for an advisory opinion on what would be considered adequate access for one house. At the ZBA hearing, Ms. Buck stated that this course of action was not consistent with what Town Counsel had advised and is a separate issue. The ZBA has an appeal before them that can be approved or denied and she was not comfortable having it referred to the Planning Board without Town Counsel's advice.

After the ZBA hearing, Ms. Buck discussed the issue with Attorney Cove. Attorney Cove stated that this matter should not go before the Planning Board for an advisory opinion. The Board should only discuss current applications; the Board shouldn't give advice on future applications.

Ms. Buck informed the Board that the Paul and JoAnn Schold did request, twice, to be put on this evening's agenda. She explained that it's not appropriate for them to come before this Board for the type of advisory opinion they are looking for in light of Attorney Cove's opinion. What also makes this difficult is that the Schold's have a pending appeal before the ZBA. Ms. Buck advised the Board that Parker Street in general should not be discussed further at this evening's meeting, since there was a request for discussion and the owners are not present; she merely wanted to inform the Board of the current status of the ZBA appeal.

Chair Friedman asked if the matter could be discussed if the appeal was withdrawn. Ms. Buck indicated that it would be less complicated, but the Board should still be careful not give advisory opinions or to deliberate on matters before an application is filed. However, Ms. Buck would like to discuss the matter further with Attorney Cove. Also, the Planning Board should not give an applicant advice on whether or not to withdraw an application before another Board.

The Board indicated that if discussion is scheduled at a future meeting, it will be scheduled after Town Meeting.

**Approval of Minutes**

2/6/07

MOTION: Mr. McNaboe - moved to approve the minutes of February 6, 2007 with minor corrections.

SECONDED: Mr. Wright – Discussion: None

Vote: 4 – In Favor / Ms. Nist abstained, not present at that meeting.

3/6/07

MOTION: Mr. Wright – moved to approve the minutes of March 6, 2007 with minor corrections.

SECONDED: Ms. Nist – Discussion: None

Vote: 4 – In Favor / Mr. McNaboe abstained, not present at that meeting.

Brief discussion was held regarding the project off of Pleasant Street and the Farm Stand/Country Store on Henshaw Street.

MOTION: Ms. Nist – moved to adjourn meeting.

SECONDED: Mr. McNaboe – Discussion: None

Vote: UNANIMOUS

Meeting adjourned at 8:45PM

Respectfully submitted:

Barbara Knox