

WALPOLE PLANNING BOARD MINUTES OF OCTOBER 15, 2009

A regular meeting of the Town of Walpole Planning Board was held on Thursday, October 15, 2009 at 7:00 p.m. in the main meeting room of town hall. The following members were present: John Conroy, chairman; Edward Forsberg, Vice Chairman; John Murtagh, Clerk, Richard Mazzocca, Don Johnson, Town Planner, Margaret Walker, Town Engineer.

Minutes: Mr. Forsberg moved to accept the minutes of September 24, 2009. Motion seconded by Mr. Conroy and voted 3-0-0.

Appointments:

7:40 The Trails Subdivision Continued Hearing: The applicant was represented by Rick Merrikin, Merrikin Engineering. He stated they have to file a request for a modification, but have decided to proceed without that being done yet. He stated this is a 5-lot subdivision, but two of the houses already exist. They are asking for waivers for construction of the road, curb, sidewalk and they will deed a 95,000 s.f. parcel that abuts Adams Farm to the town. In addition, Ron Priore has offered to throw in \$20-\$25,000 toward the improvement of Starlight Drive. They thought he could do some work on that, but at our last discussion it was stated that any work had to be done through the town; therefore, they are now looking at making a cash donation for improvements to Starlight Drive. They are seeking waivers for 18' of pavement with a standard cul-de-sac; bituminous berm except for roundings; full drainage system with detention basin to be built; private way with no maintenance issues for the town. They have had a couple of reviews by Ms. Walker, the last one was August 6. All changes are fairly minor items. They have submitted a new street name to the Fire Department E911, but haven't heard back from them yet. Deer Run which was previously submitted was not acceptable. The only other item that Ms. Walker mentioned was the detention basin and whether or not there should be a fence around it.

Mr. Murtagh stated that a cash payment of \$25,000 should be put in an account for the town engineer to oversee. Mr. Merrikin stated it could be added to the Starlight Drive bond. Mr. Murtagh asked if the Homeowners' Association would cover snow removal and Mr. Merrikin stated it would be like a condo with a homeowners' association. Ms. Walker stated the original Deer Park subdivision would have been the maintenance responsibility of that original lot, but with this proposed subdivision that cannot be pertinent to that lot in the Homeowners Association. Ms. Walker stated she would like a deed showing where it is going.

Mr. Mazzocca questioned the 95,000 s.f. parcel. He asked if it looks the same or is there a fence. Mr. Merrikin stated it looks like the same. Mr. Mazzocca asked if there is any input from the Adams Farm people. Mr. Merrikin stated no but the Conservation Commission would be happy to get this parcel.

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Mr. Forsberg asked about the road width and if the fire department was all right with 18' and a turnaround. Mr. Merrikin stated yes and they also removed the island. Mr. Forsberg asked if the cul-de-sac satisfied the fire department and Mr. Merrikin stated yes. Mr. Forsberg asked if the Planning Board has to accept the \$25,000 as a gift and Mr. Conroy stated that is correct. He stated they were talking about using the existing buffer and Mr. Merrikin stated they have to file a request to modify the Crosswoods Path subdivision. Mr. Priore doesn't want to sell any houses on that buffer, but could use it with maybe the edge of a pool house or the like. He would like to landscape in this area using landscape green versus natural green. Mr. Forsberg asked if they have to modify the Deer Park subdivision and Mr. Merrikin stated yes. He asked the length of the road and Mr. Merrikin stated 700'. Mr. Priore stated there will be a little trail at the end for the owners in this subdivision to access the open space. Mr. Priore stated the trail will only be for the use of the five houses as the public already has access in a different place. He will put this on the plan. Mr. Conroy asked Ms. Walker what we did with the 18' on Falcone Way. Ms. Walker stated she is not sure. Mr. Priore stated it was 18'. Mr. Conroy asked if we did stone and Mr. Priore stated they don't even have a curb on Falcone Lane. Mr. Conroy thought there was 2' of stone or dirt to drive on, which would allow two people to pass each other. Mr. Merrikin agreed. Mr. Forsberg stated Mr. Priore will have a curb. Mr. Merrikin stated that will make it 20'. Mr. Conroy questioned the septic system for one of the houses. Mr. Merrikin stated the house under construction has a septic system also under construction. They have talked to the Board of Health and will get a letter from them. Mr. Conroy stated that will be reflected in our decision. Mr. Johnson stated that before conveying the lot they will have to take care of the legal frontage and the detention basin. Mr. Merrikin stated it is already conveyed as they previously did a Form A.

Mr. Conroy questioned the 100' buffer and what they are doing. Mr. Johnson stated if this subdivision is approved, nothing could be done in the 100' buffer until the modification is approved. Mr. Conroy asked who is allowed to modify a previous subdivision and Mr. Johnson stated anyone with an interest in the land including the town. Mr. Conroy asked if all this land is held in ownership by the applicant and Mr. Merrikin stated yes. Mr. Conroy stated so they have the right to ask for a new hearing and Mr. Johnson stated yes. Mr. Conroy asked if we would be modifying the old subdivision and Mr. Johnson stated yes. He feels we should send this to town counsel for review. Mr. Merrikin stated their counsel is working on this now. All of the changes will only affect the applicant.

Mr. Johnson stated that no work can be done in the 100' area until we modify the existing plan. Mr. Conroy stated if we give you this tonight ahead of the other hearing and we don't agree to that 100', does that mean this subdivision is not good any more. Mr. Merrikin stated no. He further stated they don't need that land to build on anyway. Mr. Conroy stated they do need it for the square footage on the lots. Mr. Merrikin stated they can still do it as long as the road isn't in there or it is the only place to build a house or a large field, it will be okay.

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Mr. Conroy questioned the circle on Lot 18. Mr. Merrikin stated it is to establish a regular shape to the lot. It is not where the house can go. Mr. Conroy stated it is part of the buffer. Mr. Merrikin stated it doesn't matter. It is so you don't have pork chop lots. It has nothing to do with the building area. Mr. Conroy stated it is not conveyed yet and Mr. Merrikin stated the buffer exists and he will work around it until if and when he gets relief. Mr. Conroy stated he is not happy with the wording "conditioned upon". Mr. Merrikin said don't mention that then. You don't have to do that. When it is modified, there will be a document that goes to the registry. Mr. Conroy asked Mr. Johnson if he has checked with Ilana Quirk yet. Mr. Johnson stated no as he is waiting to hear from the applicant's counsel. Mr. Merrikin stated that Mr. Priore could say forget it. Mr. Forsberg stated if we accept it the way it is now, we are accepting the existing conditions on the buffer. Then what? Do you need to come back for a modification? Mr. Merrikin stated it is already there. The board doesn't have to mention it at all. They could say "it has to stay a vegetated buffer unless modified by some other means". The only one at risk is Ron Priore and he is comfortable with this. Mr. Johnson stated if it is never addressed it goes with the land forever. It should be treated as restricted land. A condition being added is more like an FYI. We will only reference it with a book and page. Mr. Merrikin stated he has that information and will give it to the board.

Mr. Conroy asked for board comments.

Mr. Murtagh asked if the buffer area is to remain restricted and Mr. Johnson stated yes. The restriction goes with the land unless it is changed.

There were no questions from the public.

Mr. Forsberg moved to grant five waivers as requested by the applicant from: 1) Section 4-6-I; Section 5-6A; Section 5-7; Section 5-8; Section 5-9. In consideration for the requested waivers, 95 s.f. of land will be donated to the town and the applicant will also provide \$25,000 for the work at Starlight Drive. Motion seconded by Mr. Mazzocca. Mr. Forsberg stated that waiver 2 is with fire department approval. Motion seconded 4-0-0.

Mr. Johnson stated we worked with town counsel on private roads this past spring. Ms. Walker stated we don't have the Operation & Maintenance and other documents yet. Mr. Johnson stated town counsel has given us new drafts so the documents need to be reviewed by town counsel. Mr. Conroy stated that will be a condition prior to endorsement. He would like the special condition to read: prior to endorsement we will submit the new format to the applicant and he will return it within the sixty days prior to endorsement. Mr. Conroy asked the time frame to get it to the applicant. Mr. Johnson stated two weeks from when we get it. Mr. Merrikin asked Mr. Johnson to email it to him tomorrow.

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Mr. Merrikin stated that the board also talked about putting in lantern lights at the end of each driveway in place of any Nstar lights. Mr. Conroy stated everyone will need to have a decorative light at the end of their driveway. Mr. Priore stated he will put them on a timer in the basement of each house so no one needs to remember to turn it on. Mr. Conroy stated he doesn't want any mention to the vegetated buffer in this decision. Mr. Johnson agreed. Ms. Walker asked the board when they want the \$25,000 delivered by. She feels this should be in the decision. She doesn't want it to fall through the cracks. It needs to be written somewhere. Mr. Priore stated he will email a letter to Ms. Walker tomorrow.

Mr. Conroy asked that the following be added to Condition #6: "please note that the applicant has agreed to donate said 95,000 s.f. parcel to the town". We will also add the \$25,000 donation into the decision. Mr. Merrikin stated that within two years or prior to the release of the bond. Mr. Conroy agreed. Ms. Walker stated she is not sure what happens if we get the rest of the Starlight Drive money. There was a discussion as to when the \$25,000 would be payable. Mr. Conroy stated it should be prior to endorsement and Mr. Priore agreed. Mr. Conroy stated it will be earmarked for Starlight Drive. Mr. Johnson stated that the O&M agreements should be submitted for review prior to endorsement also.

Mr. Forsberg asked if the detention basin will have water and Mr. Merrikin stated no. Mr. Conroy stated that the street name will be Boulder Trail unless changed by E911.

There were no further questions or comments. Mr. Conroy moved to close the public hearing. Motion seconded by Mr. Forsberg and voted 4-0-0.

Mr. Conroy moved to approve The Trails definitive subdivision as per a plan dated August 21, 2008, latest revision of July 23, 2009 by Merrikin Engineering, 2 Milliston Road, Millis, MA and shown as Assessors' Map and Parcel 4-5-7 and 4-5-8 (Lot 10A and Parcel C (formerly Lot 10) and Lot 11 Crosswoods Path), Zoning District Rural, WRPOD 4 for land located off Crosswoods Path with access from Crosswoods Path and showing five proposed lots and subject to twenty-seven (27) standard conditions and eight (8) special conditions. Motion seconded by Mr. Mazzocca and voted 4-0-0.

Other Business:

Article 21: Mr. Conroy read a letter dated October 15, 2009 from Dan Merrikin withdrawing this article for the purpose of going back to work with the Sewer and Water Commission and their consultants. Mr. Merrikin stated they hoped to be on the Spring 2010 warrant.

Legacy Lane: The board accepted this definitive application allowing the public hearing process to move forward.

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Commerford's Corner: Peter Commerford was present. He stated he has been working on this subdivision which was approved in June 2008; however, some of the restrictions in the decision are preventing this plan from going forward or from being sold to a contractor. The fire hydrant is going to cost him \$10,000 to install; there will be 477 linear feet for curb to curb pavement which will cost him in excess of \$30,000; it will cost him \$15,000 to move Nstar poles #49, #50 and #52. He is at a cost of \$55,000 without even starting. People have told him that this is too much money. He can't build the roadway himself. In addition, all approved site work on Summer Street shall be completed before a Certificate of Occupancy is issued for any lot within the subdivision. If the movement of the poles and wires on them takes two to three years, no one will wait that amount of time to get an occupancy permit. He has gone ahead and met with the fire department and they have agreed to remove the placement of the hydrant.

Mr. Commerford stated there is no reason to dig in Summer Street and therefore no need to do \$30,000 worth of pavement in the roadway. Regarding pole movement, Nstar said if the town deemed them to be a safety hazard, Nstar would remove them for free. They don't know who determined them a safety hazard. If they had known that at this time, the Planning Board might have looked at this differently. The decision now says it is his responsibility to move those poles. He might have taken a very different route had he known that. He is asking that they be granted the opportunity to open up the hearing and re-evaluate to see if these changes could be made.

Mr. Conroy asked Mr. Commerford if he is asking the board to conduct a hearing in front of town meeting and take on Nstar to make this a more viable project for him. Mr. Commerford stated this is not an economical project in his case. Mr. Conroy replied that he had stated it was not economical to move the poles, pave the road, put in a hydrant and that he didn't know that it was not economical to do these things at that time. Mr. Conroy stated that the reason we are moving the poles is because you are moving the street back. Mr. Commerford stated he is not moving the street. Mr. Conroy asked if the street is being widened by him and Mr. Commerford stated only by 6" of pavement in that area. Ms. Walker stated it was some amount between 6-18". Mr. Commerford stated that between the stone walls and the edge of the pavement there is approximately 3' of room. If he left 2' of space for snow removal, that would leave a maximum of 1' at each edge. Mr. Conroy asked if we gave waivers on this and Ms. Walker stated yes. Mr. Conroy stated we also have received an impact statement. The paved width of Kevin's Way will be 22' without curb. Mr. Commerford stated the issue is the poles. Mr. Conroy stated it was never said we, the town, would move the poles. You never brought that up. We have a decision and plan in front of us that we approved. You want us to start cutting out what we approved. Also, didn't you say a while ago that you didn't want to do this anymore? Mr. Commerford stated no. He is asking if we could determine these poles to be a safety hazard. Mr. Conroy stated they became a safety hazard when you introduced your subdivision. Mr. Commerford stated they have been hit by numerous vehicles. Mr. Commerford stated you have created a worse situation with the subdivision. Mr. Conroy stated we created the problem by putting the new street, Kevin's Way in.

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The Selectmen would have moved them if they were a safety issue. He asked what we have gained as a town on this project. Mr. Commerford stated the road has been widened where the cul-de-sac will go in.

Mr. Forsberg stated the poles came to be when we talked about straightening out the road. To him, it was a compromise to allow people to go by. Moving the poles would be cheaper than to straighten the road.

Mr. Mazzocca asked Ms. Walker to address what is on town meeting floor and how does it relate to this project. Ms. Walker stated what is before town meeting is on the other side of the street. They will move the stone wall back on Joe Lorusso's site and cut down the brush. There will be 2' more pavement. We will retain ownership control over that so we can keep the brush cut. Mr. Murtagh felt the street should be widened before we approved this.

Mr. Conroy stated this is what we approved. At the time, it was not an issue. It became an issue when you discovered how much it will cost you. He read an email dated April 30, 2009 in which Mr. Commerford stated this subdivision is now dead. Mr. Commerford stated he is trying to reduce costs that were existing in the first place. Mr. Commerford feels he will not make any money off this project. He won't even break even. Mr. Conroy stated you are asking a town board to make this more affordable for you. Mr. Commerford stated he is asking for this to be reviewed. Mr. Conroy asked Ms. Walker if we have ever moved poles for an applicant and Ms. Walker stated no. Mr. Conroy stated he will not change his mind on anything. If you do anything, it will be a whole new hearing. He reminded Mr. Commerford he is just one vote and there are other members voting on this. The cycle will start all over again and you will be starting from scratch. He stated you need new plans, new hearings, etc. It will start over like it is new. That is the only way the changes Mr. Commerford has requested can be made. What is on the plan can't change without starting again.

Mr. Commerford stated there is no ruling for making changes without starting from scratch. Mr. Conroy stated that is correct. Mr. Commerford stated he guesses that is what he will have to do.

CVS, Case No. 09-5, Site Plan Endorsement: Mr. Conroy asked if Mr. Johnson and Ms. Walker have reviewed the plans and both stated yes. There were no board or public comments.

Mr. Conroy moved to endorse the site plan for CVS, Case No. 09-5 finding the appeal period has lapsed and that the plans have been checked by both the town engineer and town planner. Motion seconded by Mr. Murtagh and voted 4-0-0. Mr. Johnson stated there was good effort put forth on everyone's part. Mr. Macchi took the mylars and will return three copies to the office as required.

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Time Cards: Mr. Conroy moved to endorse the planner's time cards. Motion seconded by Mr. Forsberg and voted 4-0-0.

Walpole Mall discussion: Don Myers, Norwood Engineering, Atty. Philip Macchi and Amy Snuffer, Mall Manager, were present. Mr. Myers stated that Panera Bread, Radio Shack and Chili's are up and operating; and, Five Guys will be open in about three weeks. He stated that since last November, they are 99% done. They are here tonight for a minor modification determination. He stated those changes are reflected on the plan before the board. He also discussed a letter dated September 28th.

Mr. Johnson stated that the Building Inspector, Jack Mee, wants the crosswalk at Panera Bread changed. Mr. Myers stated they will make that change. Also regarding a letter dated October 14, 2009, Five Guys would like two dumpsters side by side to be 10x22 instead of 10x20. Mr. Forsberg asked if they will take up the whole building and Mr. Myers stated it will take up 2/3 and they will share the dumpster. Also, behind the mall, they have approval for a compactor for cardboard and cardboard recycling. They would like a mechanical compactor. Ms. Snuffer stated the new one will more quiet than the trucks that are presently on site. Mr. Myers stated they would like these requests addressed tonight so they can move forward next week. Mr. Forsberg asked if things will work by Panera now and Mr. Myers stated he is pretty sure. Ms. Snuffer stated she talked to the police department and they think it will be okay. Mr. Myers stated these are operational issues. Mr. Murtagh stated he likes the ideas presented tonight. If Jack Mee agrees, this will be the way to go. Mr. Forsberg asked the distance from the corner of the building and Mr. Myers stated 8'. He also knows that Jack Mee has the final okay. Mr. Mazzocca feels the crosswalk should stay. It would be a mistake to get rid of it. Ms. Snuffer feels it is safer with the crosswalk. Mr. Myers stated he wants to meet with Mr. Johnson and Mr. Mee. He also stated he would like these items as Modification #5.

Mr. Conroy stated we have never had the seasonal patio at Panera in front of us before. Mr. Myers stated he is not sure. Mr. Conroy stated you are telling us what Jack Mee said and he is not comfortable with that. There is nothing on the site plan that has not changed. He also doesn't consider the changes in front of the board to be minor. Mr. Myers stated that the patio was "Change #3". Mr. Conroy asked if had mentioned this to us and Mr. Myers stated yes. Mr. Conroy stated these changes need to be done once and we need input from Jack Mee, police department, etc. He feels this has gone too far. Mr. Forsberg stated we need some confirmation that the police, fire and Jack Mee are all set. We should have a letter from them for our file. Mr. Conroy stated there have been other changes we don't know about. He would like to see everything all at once. Mr. Macchi asked if he would like a plan clouded to show the changes. Mr. Conroy stated he is suspect that there have been other changes that we don't know about. Mr. Macchi stated he feels it would less confusing if they show "Cloud 1" and what the changes are, "Cloud 2" with the changes, etc. He understands Mr. Conroy's issues. He is here because he sees the evolution of what is happening here and feels a plan clouded would help.

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Mr. Conroy stated we need comments from everyone. He is not against what they are trying to do, but he does take issue with an email that Don Myers sent to Jack Mee stating the Planning Board doesn't want them to come back with minor changes. Mr. Myers apologized and stated he was referring to tenants. Mr. Macchi stated he will send the changes to fire, police and Jack Mee for comments. There are so many different tenants that it doesn't come out the way you think it will. Mr. Conroy stated that the buildings are the buildings. Mr. Macchi stated again they will distribute the changes and ask for comments.

Mr. Mazzocca stated he feels the changes are minor and he doesn't have a problem. Mr. Forsberg agrees. Mr. Murtagh agrees and doesn't want to see the applicant delayed. He doesn't think there is any harm in getting input from the fire department, police department and Jack Mee. Mr. Johnson stated we could get everyone in a room and talk about it. Mr. Conroy stated this stuff didn't just come up. Mr. Murtagh stated he would like to see this on the fast track. Mr. Forsberg asked them to try to get comments by our next meeting. Mr. Conroy stated they also need a final plan.

Mr. Johnson stated he took pictures today in front of Panera which is an area that has been adjusted. He questioned the old crosswalk and Mr. Myers stated it will be painted out. He also questioned the temporary stop signs in front of Kohl's. Mr. Myers stated it will be changed to a "yield to pedestrians" sign. Mr. Johnson asked the time frame for this change and Mr. Myers stated he will bring it back before the Planning Board at their next meeting. He asked Mr. Johnson to email these issues to him tomorrow and Mr. Johnson agreed. Mr. Myers stated that these things will come up all winter. He asked if they should come back to the board for those kinds of things. Mr. Conroy stated that once it is signed off by Jack Mee, we are out of it. He questioned the back of the mall and if it will be painted or left as is. Mr. Myers stated it will be left as is. Mr. Conroy stated that there has been nothing done by LA Fitness where someone would enter on Route 1. There is no signage.

The League School: They submitted a discussion plan regarding parking spaces and a driveway from Moose Hill Road to those spaces. They are preparing a filing.

Mr. Murtagh left at 9:35 P.M.

Resignation: Mr. Conroy moved that we notify the Selectmen regarding the resignation of Betty Nashawaty after we receive her resignation letter. Further, our recommendation would be to select Richard Nottebart as we went through this process before with both Mr. Mazzocca and Mr. Nottebart in June. Motion seconded by Mr. Forsberg and voted 3-0-0.

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Villa Terrace: Mr. Conroy asked Ms. Walker to check out this subdivision. Ms. Walker stated she will have someone on site when Mr. Federico paves as he is doing something that has a problem. Mr. Conroy stated let him pave it. If we never accept the street, we are not liable. Ms. Walker stated this doesn't relieve him from doing any of the modifications required.

Sprint, Case No. 07-5: Mr. Johnson stated this expires in December and as yet we have not received a site plan to be endorsed. Mr. Conroy requested he send a follow up letter to them.

Farmview Estates: Mr. Conroy requested Mr. Johnson to follow up on this subdivision.

Jack Walsh, High Oaks IV: Mr. Conroy asked Mr. Johnson to follow up on this subdivision with a letter for the record.

Keaney Estates: Mr. Johnson stated the Form F covenant will expire on January 3, 2010. Mr. Conroy asked him to contact the owner of this subdivision by letter.

Meetings: Mr. Johnson stated he received an email from Nancy Mackenzie regarding a workshop in Worcester scheduled for October 27, 2009 regarding the Green Communities Act. He stated it was free workshop and he would like to attend. Mr. Conroy stated that Nancy sent that to everyone and that there would be no reason for him to attend as this has nothing to do with us.

Mr. Johnson stated he would like to attend a free workshop in Holyoke on November 10 and would provide more information to the board.

It was moved, seconded and voted to adjourn. The meeting adjourned at 10:10 P.M.

Respectfully submitted,

John Murtagh, Clerk

Accepted 11/19/09