

WALPOLE PLANNING BOARD MINUTES OF FEBRUARY 3, 2011

A regular meeting of the Town of Walpole Planning Board was held on Thursday, February 3, 2011 at 7:00 p.m. in the Town Hall Main Meeting Room. The following members were present: John Conroy, Chairman; Edward Forsberg, Vice Chairman; Richard Mazzocca, Richard Nottebart, Donald Johnson, Town Planner; Margaret Walker, Town Engineer.

Minutes: Mr. Conroy moved to accept the minutes of January 20, 2011 as presented. Motion seconded by Mr. Mazzocca and voted 4-0-0.

Time Cards: Mr. Conroy moved to approve the board secretary's time cards as submitted. Motion seconded by Mr. Nottebart and voted 4-0-0. Mr. Conroy moved to accept the town planner's time cards as submitted. Motion seconded by Mr. Mazzocca and voted 4-0-0.

Walpole Mall, Case No. 07-8 Panda Express Modification: The applicant was represented by Don Myers, Norwood Engineering and Mr. Li, Manager of Panda Express. Mr. Myers stated they would like an outside patio with four tables. Mr. Myers also submitted an affidavit verifying the signatures of the mall owners. He stated they have already been before the Board of Appeals and received a special permit. The Zoning Board was concerned with some safety issues, but those changes were made. The mall has a surplus of parking and the fact that they are decreasing the parking by two spaces does not substantially change anything. Mr. Forsberg asked if there are bollards and railings on the plan as requested by the Zoning Board and Mr. Myers stated yes. He asked if there is a detail showing the height and Mr. Myers stated yes. It is shown on the third page.

Mr. Conroy asked what they mean by seasonal and Mr. Li stated it means in the Spring, Summer and Fall. They only have 38 seats in the store now. Mr. Conroy asked if there will be waitress service outside and Mr. Li stated no, food will be taken out by the customer. Mr. Forsberg stated Jack Mee has said he has no issue with the parking, but Mr. Forsberg questioned the handicap spaces. Mr. Myers stated they are all set with that. Ms. Walker asked if this will change the traffic flow around the aisles and Mr. Myers stated no because this is a corner space. Mr. Nottebart asked if the town planner checked the parking numbers provided and Mr. Johnson stated yes.

Mr. Conroy moved that the changes for Panda Express as presented be determined a minor modification. Motion seconded by Mr. Nottebart and voted 4-0-0. Mr. Myers stated he will be back with a plan for the board to endorse.

Mr. Forsberg asked why Panda Express filed with the Zoning Board instead of the Planning Board for a special permit for outdoor seating. Mr. Johnson stated the Planning Board only grants special permits for that purpose for properties that are in the CBD.

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7:22 p.m. Texas Roadhouse Continued Hearing: Mr. Conroy stated this request was continued from January 20th as the applicant needed to obtain the signatures of the mall owners, which Mr. Myers submitted with an affidavit. He presented the modified plans for endorsement. Ms. Walker asked if the parking is okay and Mr. Myers stated there has been no change in the number of spaces. Ms. Walker questioned the recharge area. Mr. Myers stated there has been no change and also the catch basins are the same except for one additional one that was added behind Texas Roadhouse.

There were no further comments.

Mr. Conroy moved to endorse the plans for a minor modification as presented. Motion seconded by Mr. Nottebart and voted 4-0-0. The board signed the plans and Mr. Myers will return three copies to the Planning Board office.

Hollowdale Farm: The applicant, Anthony Delapa was represented by Atty. David Hern, Norwood. Mr. Hern stated they would like to come to some resolution even though Ms. Walker recommended holding back almost all the money. Her concerns are whether the recent paving that was done in October/November will make it through the winter. If the seams fail, they would have to take off the top coat and that would cost approximately \$40,000. He is aware that as-builts, acceptance plans and trees need to be done. He is asking that the board return more than \$3,000, which is the amount Ms. Walker recommended. Ms. Walker explained how she arrived at this bond figure. After the last meeting, she went back to the guys that work for her and asked if the seams open up, how do we fix it? Ron Preibus said they would basically have to take off the top coat. They can't patch it. If it makes it through one winter, he doesn't think it will have a problem. It is not just the cold, it is the freezing and thawing process that affects the road. She stated that if we release this money now and there is an issue next spring, we will need that money. She needs to know there is enough money in the bond to fix any problems that may arise. Mr. Hern stated he took that into account when he did his calculation. The roadway has already been put in. There may be concerns, but it was done with representatives from Ms. Walker's office present to observe this work. They are talking about what if something goes wrong. Also, the present spreadsheet shows trees. His client says those trees were put in five years ago. He feels any amount related to the trees should not be held back. He hopes the board would be comfortable with retaining \$80,000, which also includes the survey bounds. His client just wants some of the \$128,000. He doesn't think the town needs to hold back so much. This is not an untested and untried subdivision. He asked the board to consider the request before them for a reduction. If the town held \$80,000, he feels that would be a sufficient amount. Mr. Forsberg asked why we are having a problem with the seams any way. We have never had that problem before. Ms. Walker stated it could be a combination of things. Mr. Hern stated that the contractor, who did the work, Dennis O'Brien, bought some equipment to go over the seams. They went over and above the normal approach and the proposed release of \$3,000 is not enough. This road is already in.

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Mr. Forsberg asked if there is a problem with the base coat. Ms. Walker asked if he means the original base coat and Mr. Forsberg stated yes. She stated they walked the site with them and Dennis O'Brien to determine what was in good condition and at that time there were some bits and pieces that could be saved. Mr. O'Brien did apply a flat iron machine in an attempt to fix the road. We don't typically tell them to do the work and then hold back money. She suggested the board go and look at Millbrook or New Fisher Lane. There are no seams. The problem could be because it was done in November or it could be the temperature of the asphalt or it could be other things. Mr. Forsberg asked if it could be a bad mix and Ms. Walker stated she doesn't think so because there is some crumbling, but not a lot. Mr. Forsberg stated the bond isn't in place to finance the project. Mr. Hern stated he knows that. They are saying, yes, hold some money, but you don't need \$128,000. Ms. Walker stated sometimes it takes a while to see if there will be a problem. Mr. Hern stated there is nothing that says what was done is wrong. He feels they should take today's values on the materials, add in the surveyor bounds, add 20% and you will come up with \$80,000. That amount will not leave the town exposed. The board needs to ask themselves how much do you really need and what is reasonable.

Mr. Forsberg asked if this will make the Spring town meeting and Ms. Walker stated no because the warrant is already closed. Mr. Mazzocca asked Ms. Walker to explain her estimate with regard to the catch basins and asked if they were already in. Ms. Walker stated yes they are in and explained the process. Mr. Nottebart stated that Ms. Walker doesn't usually dig in on these issues and asked what is unusual about this situation. He sensed that Mr. Delapa didn't keep this moving. Ms. Walker stated a number of years have gone by with little or no work being done up there. Mr. Nottebart asked if we have progressively pursued them to finish and Mr. Johnson stated we started meeting with them in late spring and summer of 2009. Mr. Nottebart asked Mr. Hern if he feels his client has made a strong effort to wrap this up and Mr. Hern stated the economy being what it was, they didn't rush to finish, but he doesn't have all the history as to what went on. They are trying to get it taken care of now. Mr. Johnson stated that deterioration of the first coat of pavement over the years was most evident to him as an observer. Mr. Nottebart asked if that was brought to the applicant's attention and Mr. Johnson stated yes. Ms. Walker stated that Mr. Delapa, Sr. came in and told her he wanted to finish this. Mr. Hern stated they have been working on since at least early October.

Mr. Conroy stated the original base coat didn't really fail, it just wore out. Right now, the question is the seam, but they did go back and infrared it. Ms. Walker agreed. Mr. Conroy stated they have made attempts to make sure the situation out there is correct. He came up with a figure of \$86,000 to hold back. Ms. Walker recommended we keep a good record of what is going on so when they come back in six years, we know what we did. Mr. Conroy stated it shouldn't be six years.

There was no further discussion.

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Mr. Forsberg moved to reduce the bond to \$90,000 with no further reductions allowed. Motion seconded by Mr. Conroy and voted 4-0-0.

Bird Estates Phase V Bond: Mr. Conroy moved 1) to accept Phase V Performance Bond #0545928 dated January 5, 2011 issued by International Fidelity Insurance Company of New Jersey in the amount of \$330,000.00 on behalf of the Bird Estate Limited Partnership, a Massachusetts limited partnership owned by wholly-owned subsidiaries of Toll Bros., Inc. finding that the bond has been reviewed by the Town of Walpole Finance Director, Mark Good and Town Planner, Don Johnson, for Phase V of the Bird Estate subdivision; 2) to endorse Performance Bond #0545928 Exhibit A Performance Secured by a Surety Company dated January 5, 2011, as presented; 3) to release the Form F Covenant and to endorse a Form I Partial Release of Covenant for Recorded Land Lots numbered 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 77, 78, 80, 81, and 82 as required by the Covenant dated August 13, 2003 and recorded in Norfolk Registry of Deeds, Book 20350, Page 413 and as shown on a plan entitled "Overall/Open Space Plan, Definitive Plan for The Bird Estate" recorded with said Registry of Deeds, Plan Book 516, Plan 779-2003. Motion seconded by Mr. Mazzocca and voted 4-0-0.

Meeting Schedule: It was agreed there would be no Planning Board meeting held on February 17, 2011 or March 3, 2011.

FEMA Town Meeting Article: It was agreed to hold the public hearing in April.

Mr. Johnson stated he would like to go to the American Planning Association National Conference in Boston from April 9 to April 12. Mr. Conroy moved to pay as much of the registration fee as we can. Motion seconded by Mr. Forsberg and voted 4-0-0.

It was moved, seconded and voted to adjourn. The meeting adjourned at 9:00 p.m.

Respectfully submitted,

John Conroy, Chairman

Accepted April 7, 2011