

PLANNING BOARD
Meeting Minutes
Tuesday, November 20, 2012
Town Hall, 120 Main Street
7:00 PM

1 Present: J. Simons, M. Colantoni, D. Kellogg, L. Rudnicki. L. McSherry, R. Rowen (arrived at
2 7:15pm).

3 Absent:

4 Staff Present: J. Tymon, J. Enright

5

6 Meeting began at 7:00pm.

7

8 **BOND RELEASE**

9 **Red Gate Lane:** Request for partial release of a \$20,000 slope stabilization bond.

10 J. Tymon: All four homes in the subdivision are occupied. The slope was completed in 2007
11 and there was a Lot release at that time for Lots 3 and 4. In 2010 there was an issue with the
12 slope and it had to be re-engineered. There have not been any problems since then. The
13 developer is requesting a partial release of the slope stabilization bond. The Decision requires
14 that the slope stabilization bond not be released until three years from the date of completion of
15 the slope or acceptance of the roadway, whichever came first. The engineer of record, Ben
16 Osgood, submitted a letter today stating the slope has been constructed in accordance with the
17 plans and has been stable for more than two years. The applicant would also like to discuss
18 waiving the sidewalk construction at an upcoming meeting.

19 **MOTION**

20 A motion was made by M. Colantoni to release all but \$5K of the slope stabilization bond for
21 Red Gate Lane. The motion was seconded by L. Rudnicki. The vote was unanimous.

22 **ANR**

23 **100 Dale Street:** Proposal to create two lots from one existing lot.

24 Phil Christiansen, Christiansen and Sergi representing the applicant: This lot is just over 4 acres
25 in size with 225' of frontage. Last spring this was brought to the Board and it was suggested
26 that, as opposed to creating a subdivision with several variances, we try to get variances for
27 frontage from the ZBA. The ANR Plan divides this property to two lots with an area of two
28 acres each. In 1987 this lot was re-zoned from one acre zoning to two acre zoning. The lots
29 would be short in terms of frontage and lot width. There are two signature blocks on the Plan
30 and two notes that were read into the record. The Lots are not to be considered buildable until
31 the Plan is endorsed by The Planning Board and the variances requested are granted by the NA
32 Board of Appeals.

33 J. Simons: As long as there is a provision that the Lots may not be conforming to Zoning it is
34 not a problem. Requested the Town Planner discuss the application with Town Counsel to make
35 sure nothing has to be added to the Form A.

36 **MOTION**

37 A motion was made by D. Kellogg to direct the Town Planner to endorse the Form A for 100
38 Dale Street subject to the discussion and conditions applied this evening. The motion was
39 seconded by L. McSherry. The vote was unanimous.

40 **411 and 421 Stevens Street:** Proposal for a lot line change.

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41 J. Tymon: The applicant that submitted the ANR form called the office today to request to
42 Withdraw. He did not, however, submit the Withdrawal request in writing. Tomorrow is
43 the twenty-first day since the application was submitted.

44 **MOTION**

45 A motion was made by D. Kellogg to direct the Town Planner to deny the 411/421 Stevens
46 Street ANR. The motion was seconded by L. McSherry. The vote was unanimous.

47 **PUBLIC HEARINGS**

48 **CONTINUED PUBLIC HEARING**, 171 Brentwood Circle: Application for a Watershed
49 Special Permit for installation of an inground swimming pool, concrete deck/patio, chain link
50 fence, associated grading and utilities within 100 feet of a Bordering Vegetated Wetland.

51 J. Tymon: All of L. Eggleston's comments have been addressed, a pool maintenance plan has
52 been included, and an equipment pad had been added to the plan.

53 Jack McQuilkin, Registered Engineer JM Associates: A revised plan has been submitted along
54 with maintenance plan that details the process for draining the pool.

55 A draft Decision was reviewed.

56 **MOTION**

57 A motion was made by M. Colantoni to close the public hearing for 171 Brentwood Circle
58 Watershed Special Permit. The motion was seconded by D. Kellogg. The vote was
59 unanimous.

60 A draft Decision was reviewed.

61 **MOTION**

62 A motion was made by D. Kellogg to approve the Watershed Special Permit for 171
63 Brentwood Circle, as amended. The motion was seconded by R. Rowen. The vote was
64 unanimous.

65

66 **NEW PUBLIC HEARING, 72 Great Pond Road**: Application for a Land Disturbance Permit
67 and a two (2) lot Definitive Subdivision Plan. One of the two lots contains an existing home.

68 J. Tymon: L. Eggleston has reviewed the Land Disturbance application and the scope of the
69 disturbance. She has determined that this permit is not required. The disturbance is less than an
70 acre and is not going to change the drainage more than an acre. The subdivision has its own
71 stormwater standards to comply with. The developer is asking for a waiver of the 50' Right Of
72 Way. If it were to be a 50' ROW there is a possibility that part of the existing home would need
73 to be torn down. L. Eggleston's recommended an infiltration trench on the side of the driveway
74 as opposed to a porous driveway because of the 8% slope. There are roof infiltrators to a
75 drywell. Soil testing has been provided.

76 Tom Zahoruiko, Developer: Described the existing conditions, conventional subdivision plan,
77 and proposed site development of the Form A lot and Definitive Subdivision Plan. This project is
78 currently before the Conservation Commission as well. The applicant has met with direct
79 abutters, John and Rosalee Niceforo, and they have submitted a letter in support of the proposed
80 driveway instead of construction of a street in order to preserve as many mature trees as possible
81 in the boundary area between the properties. There is a waiver request of the 50' ROW down to

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82 a 40' ROW. A 50' ROW can be constructed but if it is the part of the garage of the existing
83 home will have to be removed.

84 J. Simons: Can a portion of the ROW be 50' and a portion 40'?

85 T. Zahoruiko: Yes, the pinch is only to get by the existing garage area.

86 R. Rowen: Another alternative is to go to Zoning to request a variance to the side setback.

87 T. Zahoruiko: It is really a self imposed hardship and may not get support.

88 R. Rowen: Is it at all possible to subdivide the back lot further in the future to put in another
89 house?

90 T. Zahoruiko: It is one acre, R-2 Zoning, so there is no more possibility to subdivide it.

91 R. Rowen: Stated he prefers to leave the entire ROW at 40' as opposed to going from 50' to 40'
92 back to 50' since to ROW will service just one house on one lot that can not be further
93 subdivided.

94 T. Zahoruiko: Reviewed the topography of the site, the wetland area, disturbance area, and
95 grading areas.

96 J. Tymon: L. Eggleston's review is complete. The DPW and an abutter have submitted letters
97 stating they prefer a driveway to a conventional roadway.

98 J. Simons: This can be closed at the next meeting and a draft Decision prepared.

99

100 **NEW PUBLIC HEARING**, 1018 Osgood Street: Application for Site Plan Review-Special
101 Permit for proposed construction of a 2,250 sq. ft. coffee shop with drive-thru and associated site
102 amenities including drive-thru lane and twenty five (25) parking spaces. In addition, applicant
103 has filed for a Request of Determination of Applicability of Watershed Protection District
104 Requirements.

105 J. Tymon: This is a public hearing for Site Plan Review and to determine if this lot is subject to
106 the Watershed. The parcel is in the watershed. L. Eggleston has submitted a review letter dated
107 November 6, 2012 that states, "based on surface topography, the southwest portion of the lot
108 (area IS on the pre-development drainage plan) drains in a southerly direction (toward Osgood
109 Street and the lake), while the remainder of the lot drains toward the small bordering vegetated
110 wetland (BVW) in the northeast corner of the lot". In general, L. Eggleston states that the
111 amount of impervious surface covered on the site and to provide the infiltration makes this a
112 difficult site. There was also a discussion with Hancock Associates regarding the traffic and
113 parking. The applicant is providing 25 parking spaces, a fair amount of queuing space, a menu
114 board, drive-through window, and two entrances and exits. There is a possibility of reducing the
115 parking spaces with a waiver request to lessen the impervious surface.

116 Mark Gross, MHF Design Consultants representing JFJ Holdings: Based on the reviews
117 received from the three different consultants there were some opposing issues that have to be
118 dealt with in terms of satisfying the stormwater issues and some of the traffic issues. Twenty
119 seven parking spaces are required. This application requests a waiver down to 25 spaces. A
120 parking study is being completed to determine how many spaces are really needed. It may be 15-
121 20. The Bylaw allows for a waiver up to 35% of the total parking requirement. There are nine
122 queuing spaces. There is additional queuing space possible, but it would block some parking
123 spaces that would be identified as employee parking spaces. The back three quarters of the
124 property drains to a wetland that drains to the Merrimack River. There is a possibility that some

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125 of the water from the front of the site could cross Osgood Street and eventually get into the lake.
126 A Watershed Special Permit application will have to be filed for the front quarter of the property
127 and the drainage design will have to be modified. Based on comments from Mass DOT, the civil
128 engineer consultant, and traffic consultant the original proposal of one two-way driveway and
129 one exit only driveway will be revised to an entrance only and an exit only driveways.

130 Heather Monticup, Traffic Engineer, Greenman-Pedersen, Inc.: The traffic study was prepared
131 in August 2012 and submitted to both the Town and Mass Dot. Although an existing business
132 two parcels down the road is moving to this site none of the existing traffic was taken off the
133 roadway, it was assumed to be there and the traffic numbers were built on top of them. Existing
134 condition including traffic volumes, vehicle speeds, and collision data were examined. Future
135 conditions were also looked at for the next five year period. A historical growth rate,
136 background developments, and roadway improvements along the corridor were included.
137 Reviewed expected trip rates for peak hours and Saturdays. A queue of up to 13 cars could be
138 accommodated on site without the line backing up onto Osgood Street. All the minimum
139 requirements for site distances can be met. The capacity analysis was reviewed which showed
140 there should not be any effect on Osgood Street. There will be minimal delays at the site
141 driveways. It is anticipated to operate at a level of service A with less than one vehicle waiting
142 at anytime to turn left into the site. The site driveways will have longer delays but the site will
143 be modified to accommodate the enter only and exit only driveways so further analysis needs to
144 be completed.

145 M. Gross: Reviewed the proposed New England architectural design and elevations. An “Intent
146 for Construction” form will be filed with the FAA for their review.

147 J. Tymon: The applicant will probably not have enough time to make the changes to the plan
148 and have the changes reviewed by the consultants by the next meeting. This will have to be
149 continued until the second meeting in December.

150

151 NEW PUBLIC HEARING, 623 Osgood Street: Application for Frontage Exception Special
152 Permit and Definitive Subdivision. Applicant proposes creation of three lots, of which Lot 1 is
153 the subject of the Frontage Exception Special Permit. No new residential dwellings would be
154 constructed on the Premises.

155 J. Simon: Provided background for this application. At last year’s Annual Town Meeting to
156 Town put in a proposal under the CPA to purchase property at this location. The intent of this
157 application and permit is to put property in a conveyable form so that the Town can complete the
158 transaction. The intent of this proposal is not to construct a subdivision, new road or houses on
159 this property but to actually allot the land in proper form so that if this transaction comes to a
160 proper conclusion the Town can purchase the property that it is interested in for conservation
161 purposes and the family can continue to own the remaining lot and have access to property. If
162 for some reason the Town does not end up purchasing the property the Subdivision and/or
163 Frontage Exception will go away.

164 John Smolak, Attorney for the applicant: At Town Meeting the voters voted to appropriate funds
165 to acquire most of 623 Osgood Street in an attempt to maintain the family lot, while at the same
166 time, convey the balance of the property to the Town as Open Space. Three alternatives were
167 reviewed. The subdivision alternative was reviewed in detail. Lot 1 contains the existing family

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168 residence. Lots 2 and 3 would be conveyed to the Town. It is not yet determined if the roadway
169 would be conveyed to the Town. An appraisal of the property is being completed. The Town
170 can not purchase property in excess of an appraised value. The reason for the separate
171 alternatives was to try to anticipate the variation in value of the property based on different
172 scenarios. Waivers of the typical roadway construction have been requested simply because no
173 construction will be completed.

174 R. Rowen: If Lot 1 is created will it conform to Zoning?

175 J. Smolak: Yes.

176 D. Kellogg: How would the public access Lot 3?

177 J. Smolak: There has been discussion about putting a small parking lot and a path to the
178 property.

179 **ABUTTERS**

180 Charles Daher, 653 Osgood Street: Requested clarification of what the parking situation would
181 be.

182 J. Simons: The parking is completely separate from the subdivision proposal. If parking were to
183 be put in it would be for 2-4 cars on the corner of the property. The Conservation Commission
184 would decide on that. This is conservation land and we want it to be as small and unobtrusive as
185 possible.

186 Christine McLaughlin, representing the owners of 605 Osgood Street: Will there be a deed
187 restriction stating these lots are not buildable?

188 J. Simons: The Decision will state that if the sale of the property to the Town does go through
189 there will be a condition that a Conservation Restriction is placed on the land. If the sale does
190 not go through this subdivision will go away.

191

192 **MOTION**

193 A motion was made by D. Kellogg to close the public hearing for 623 Osgood Street. The
194 motion was seconded by R. Rowen. The vote was unanimous.

195 J. Simons: Read a letter dated November 20, 2012 from John Smolak requesting a
196 continuance for the Frontage Exception Special Permit until December 4, 2012.

197 A draft Decision was reviewed.

198 **MOTION**

199 A motion was made by R. Rowen to approve the Definitive Subdivision Plan for 623 Osgood
200 Street, as amended. The motion was seconded by L. McSherry. The vote was unanimous.

201

202 **DISCUSSION**

203 108 Champion Road: Request for a waiver of a Watershed Special Permit.

204 J. Tymon: There has been some vegetation clearing on the Lot. Pre-clearing aerial
205 photographs were distributed to the Board. This is in the Non-Disturb Zone, within 100' of
206 a wetland that drains to the lake, which requires a Special Permit for vegetation clearing.
207 The Conservation Commission has looked at the project and would like to require as much
208 restoration as possible and as little lawn area as possible. This is still before the
209 Conservation Commission. They are willing to take direction from the Planning Board in

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210 terms of whether you would like to waive the Special Permit and accept Conservation's
211 conditions and restoration plan or to require a filing for Watershed and include a set of
212 conditions for the restoration plan.
213 Bill MacCleod: Reviewed the property lot lines, 25', 50', and 100' distances from the
214 wetlands, and distance to the lake. Stated that a normal homeowner would not know that
215 this was actually a wetland, it does not look like a typical wetland. The homeowner was not
216 aware of the multi-layers of the Town regulations. Since the applicant is in front of
217 Conservation the Town will have oversight to the replanting and vegetation of this area.
218 There is no pavement or drainage being added. There is cost associated with filing for a
219 Watershed Special Permit, including a peer review.

220 J. Simons: This property is within approximately a few hundred feet of the lake. The
221 Planning Board has jurisdiction. Functionally the reviews by Planning and Conservation
222 are similar. Some of the fees can be waived; however, there has been a fairly egregious
223 violation, albeit unintentional. Expressed he would like to see a formal application and
224 plans.

225 B. MacCleod: At the Conservation Commission's request the site has been stabilized. The
226 applicant is before Conservation to get the approval to re-plant.

227 J. Tymon: It would be a combination review. The Planning Board does have jurisdiction
228 because the entire area is in the Non-Disturb Zone. The Conservation Commission has
229 deferred to the Planning Board and has not made any decisions yet. The Boards would be
230 working together on the same restoration plan.

231 R. Rowen: Agreed the fees can be waived; however, protecting the lake is of importance.

232 J. Simons: Requested that the applicant file a Watershed Special Permit application.

233

234 **MEETING MINUTES**: Approval of October 16, 2012 meeting minutes.

235 **MOTION**

236 A motion was made by L. Rudnicki to approve the October 16, 2012 meeting minutes. The
237 motion was seconded by L. McSherry. The vote was unanimous.

238

239 **ADJOURNMENT**

240 **MOTION**:

241 A motion was made by M. Colantoni to adjourn the meeting. The motion was seconded by
242 D. Kellogg. The vote was unanimous.

243

244 The meeting adjourned at 9:10pm.

245

246 **MEETING MATERIALS**: Agenda, Letter dated Nov. 20, 2012 from Benjamin C. Osgood, Jr.,
247 P.E. RE: Red Gate Pasture subdivision, Draft Notice of Decision 171 Brentwood Circle, 72
248 Great Pond Road: Letter dated Nov. 12, 2012 from John and Rosalee Niceforo, interoffice
249 Memorandum dated Nov. 14, 2012 from Gene Willis, Definitive Subdivision Plan "Turkey
250 Hill dated Oct. 1, 2012, Site Development Plan of Land Lot B dated Oct. 22, 2012, Existing
251 Conditions Plan dated Oct. 1, 2012, 1018 Osgood Street: Site Development Plan dated July

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252 18, 2012, Existing Conditions Plan, Letter dated Nov. 6, 2012 from L. Eggleston RE: 1018
253 Osgood Street Watershed Protection District Applicability, Traffic Impact and Access Study
254 from GPI dated Aug. 2012, Summary of reviews memo dated Nov. 13, 2012, 623 Osgood
255 Street: Letter dated Nov. 20, 2012 RE: continuance request for Frontage Exception Special
256 Permit from John T. Smolak, Application for Definitive Subdivision Approval, Application
257 for Frontage Exception Special Permit, Definitive Subdivision Plan of Land dated Nov. 14,
258 2012, Letter dated October 31, 2012 from John T. Smolak, Form I Covenant and Form J Lot
259 Release, draft Decision-Definitive Subdivision Plan, Letter dated October 9, 2012 from J.
260 Hughes, Conservation Administrator, and J. Tymon, Town Planner, RE: 108 Campion Road
261 violation, Pictometry pictures 108 Campion Road, draft 10/16/12 meeting minutes.