

PLANNING BOARD
Meeting Minutes
Tuesday, October 19, 2010
Town Hall, 120 Main Street
Top floor conference room
7:00 PM

1
2 **Present at Meeting:** J. Simons, T. Seibert, M. Colantoni, R. Rowen, C. LaVolpicelo, R. Glover

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4 The meeting began at 7:02 PM.

5
6 **POSTPONEMENT:** Public Hearing: 1003 Osgood Street. Watershed Special Permit and Site Plan Review
7 Special Permit for const. of a new 21,000 sq. ft. restaurant/office/retail building and relocation of a historic barn.

8
9 **Lot Release:** Peter Breen to request lot release for 99 Ogunquit Lane.

10 Judy: This is for Rocky Brook Estates; Lot #5 has been sold.

11 Travis Breen, (representing the applicant): The house is almost completely built.

12 J. Simons: Explained that a house can not be constructed if the lot was not released from the covenant prior. A
13 building permit should not have been issued.

14 Judy: They are requesting the release so they can sell the lot and the home that is currently being constructed.

15 J. Simons: Has the road been accepted? How much bond money do we have held?

16 Judy: Does not think the road has been accepted and will have to look up the bond money.

17 R. Rowen: Holding the lot in escrow is in lieu of a bond. A building permit could not have been issued, correctly.

18 J. Simons: Until we sort this out we will have to wait on the lot release.

19
20 **Bond Release:** Red Gate Subdivision.

21 Judy: All of the drainage work has been done. I have made several visits to the site along with Gene Willis, Town
22 Engineer. The last item to be completed is an as-built to be done for the drainage and we did get one late last week.
23 Gene is reviewing it and has a few minor questions. We have a surety bond in place for \$102K, a \$10K site opening
24 bond, and a \$20K erosion control bond. Gene is recommending that the surety bond be reduced to \$56K. This
25 would leave money in the account for maintenance of the water main, maintenance for storm drainage, pavement,
26 street trees, detention area, street conveyance and final as-builts. This bond reduction would be contingent upon the
27 developer putting on the final binder coat of pavement before the winter. The developer, Rick Dellaire, would also
28 like to ask for the release of the \$10K site opening bond.

29 Gene Willis, Town Engineer: I, as well as the developer, would like very much to get the binder coat on before the
30 winter. There are three outstanding concerns that I have in my response to the developer's engineer but they all
31 have to do with the drainage and storm water runoff, not the road. I recommend the reduction, but that the reduction
32 is contingent upon the completion of the final binder coat.

33 T. Seibert: asked for clarification on what the 10K Site Opening Bond was for.

34 R. Rowen: explained the purpose of the bond and that the work associated with it is complete.

35 Mr. Cyr, abutter: What does the bond have to do with them actually paving the road? It seems like a trade off to
36 give the relief from the \$10K surety bond so that they can pave the road.

37 J. Simons: The \$10K is not a surety bond. It is a cash bond for the initial opening and closing of the road and that
38 work is complete.

39 Mr. Cyr: So this is a bond held for the road?

40 J. Simons: The surety bond is for the road, drainage improvements and all the other improvements we
41 have been talking about.

42 Mr. Cyr: Are you holding the 4th lot at this point or are they ready to build when it is sold?

43 J. Simons: the 4th lot is still under the covenant. If the applicant asked us to release it we would confer with Mr.
44 Willis to see if the bond amount held is sufficient to cover the value of the work remaining. If he said yes we would
45 be compelled to release the lot.

46 Mr. Cyr: When would that happen?

47 J. Simons: We can't speak for the developer.

48 Mr. Cyr: This particular bond was set aside for the road and drainage issues?

49 J. Simons: Yes, and we are just balancing the bond amount with the amount of work that is remaining.
50 **MOTION:** R. Rowen made a motion to accept the town engineer's recommendation for a reduction in the surety
51 bond for Red Gate subdivision down to \$56K to be released after the road is brought to final top coat. The motion
52 also recommends the release of the \$10K cash site opening bond. The motion was seconded by T. Seibert. The vote
53 was unanimous.
54
55 **PUBLIC MEETING:** 288 Sutton Street. Proposed five (5) lot Preliminary Subdivision, "Matthew's Way"
56 R. Rowen: Purpose of a public meeting is to provide an opportunity for the developer to solicit ideas of the
57 Planning Board so that they can make changes early in the design process to avoid wasting a lot of money on a
58 design that is not going to go anywhere. It gives a chance for the public to provide their input as well.
59 Judy: The abutters were notified even though it is not technically required. L. Eggleston has done a review
60 provided some of her concerns regarding stormwater management. There are some wetlands and the project will
61 have to go before Conservation.
62 J. Smolak, attorney for the applicant, as a follow-up to the Board's last meeting on this matter the applicant is
63 preceding to a 5-lot subdivision in lieu of a 4-lot proposal which would include a roadway improvement plan along
64 Ellis St. The proposal is a 5-lot subdivision, including an 18' wide paved roadway with access to the lots from
65 Sutton St. There would be a paved 'T' at the end of the roadway to allow for turnarounds. The roadway
66 improvements and maintenance are intended to remain private and not a public way.
67 Greg Saab, project engineer, reviewed notes on the drainage system. Roof drain runoff along with other stormwater
68 management items would be put on a definitive plan. The plan includes some proposed improvements to the
69 drainage system on Ellis Street. These include a catch basin, drain manhole, another deep sump catch basin and
70 drain manhole, and a tie into an existing 12" pipe.
71 R. Rowen, are there variances required here from ZBA for the right of way width?
72 Judy: No, that is Planning Board.
73 J. Simons: There have to be waivers required from Subdivision Rules and Regulations. Has a sketch plan been
74 done that indicates 5-lots that are conforming?
75 Judy: Yes, they previously provided a plan showing the 5-lots met zoning for this area.
76 T. Seibert: Where does the drainage discharge from the 12" pipe?
77 G. Saab: To a 24" pipe on Sutton St. and it eventually goes to the river. We will show L. Eggleston that we will
78 keep the flow the same.
79 T. Seibert: Where is the 100' buffer zone? There is a good portion of one of the lots in the buffer zone.
80 J. Simons: Judy, what do we have from the Fire Dept.?
81 Judy: Nothing in writing but they commented at an internal Technical Review Committee meeting that they did not
82 have issues with the proposed road way width or the 'T' turnaround.
83 Sharon Lewis, abutter, 272 Sutton Street: Is the placement of the dwellings on the lots and type of houses decided at
84 this meeting?
85 J. Simons: No. First they have to conform to the zoning setbacks and they have to build the lots in such a way that
86 they don't create a drainage problem. We can't dictate as part of the subdivision process exactly what the houses are
87 going to look like but we can provide some general direction.
88 J. Smolak: I am not sure the developer has decided yet.
89 S. Lewis: Will there be improvement to the surface of Ellis Street after the drainage improvements are done.
90 G. Saab: It will remain a gravel road.
91 S. Lewis: Will there be any impact to trees around my property?
92 G. Saab: We will preserve the majority of the trees. We will have to bring a pipe through and some small trees
93 might be affected.
94 J. Simons: When we get to that point we typically have the Planner go out to the field and identify and mark the
95 trees we want to preserve.
96 S. Lewis: What is proposed for the land between our house and the new road?
97 Judy: There would be some provisions for sight distance so that there is a safe line of sight exiting the street.
98 G. Saab: There will be a slight swale to make sure there is no water that runs to the house. It will be a small, grass
99 swale. You will be able to mow it.
100 Guy Duffy, abutter, 3 Ellis Street: Likes the way it is laid out but wants to know what was said about it could
101 change. He thinks it will help the current drainage.
102 J. Simons: I said the design of the individual houses on the lot might change.
103 Judy: It is up to the developer to show that they will not increase the drainage onto neighboring properties.

104 J. Simons: Since this is not a Public Hearing we do not have to close it but would like a Decision drafted. It should
105 state that it doesn't necessarily mean we will approve the Definitive Plan if we choose to approve the Preliminary.
106

107 **DISCUSSION ITEMS**

108 **195 Bridle Path:** Applicant R. Ercolini was to present changes to an approved Watershed Special Permit.
109 Applicant did not attend the meeting.
110

111 **1820 Turnpike Street:** Applicant, Gino Fodera, to present changes to allow for a drive-thru restaurant.

112 Judy: This is a commercial building with office/ retail space that was issued a Special Permit-Site Plan Review in
113 August 2007. The Zone is General Business. The drive through is to come off Berry Street, not Turnpike Street.
114 There is also an additional patio being requested.

115 G. Fodera, one of the owners of the building: There is about 190' from entrance to the drive through location. We
116 were approved for a patio on the back of the building. Want to keep the patio for the restaurant and to add an
117 additional patio for a new tenant.

118 Judy: The consideration for the Board is that should this be a modification of the Site-Plan Review Permit or waiver
119 of Site Plan Review.

120 J. Simons: You absolutely have to come back in as a modification.

121 R. Rowen: You need to come back and demonstrate that you still have 360 degree access around the building. The
122 plan does not show enough detail. You need to show how the parking and flow will be affected.

123 C. LaVolpicelo: You are creating more impervious surface with the addition of the deck and with the new lane.
124 This will have to be readdressed.

125 J. Simons: This plan decreases the parking and the building is located directly across the street from a residential
126 district. The consensus of the Board is that you will have to come back with an application for a modification to the
127 Special Permit-Site Plan Review. You will have to hire a traffic engineer for this.
128

129 **Charlie Foster to present proposed zoning change** regarding two-family dwelling units in the R-4 District for
130 Annual Town Meeting 2011.

131 Judy: Prior to the May 2004 Town Meeting one or two dwelling were 'as of right' in a residential district. Town
132 Meeting May 2004 a zoning change was made requiring a special permit for two-family dwellings. Mr. Foster
133 would like to have it changed so that existing two-families are 'as of right' so that they don't fall under non-
134 conforming regulations and require special permit for alterations and increase in size.

135 C. Foster: May 2004 the Planning Board brought an Article before the Town Meeting for a zoning amendment that
136 resulted in all two-families in town becoming non-conforming rather than allowing the existing two-families to
137 remain as they were. These two-families were removed from the permitted list of uses. Why eliminate two-family
138 homes in the first sentence of the bylaw and then allow them with a special permit in the next sentence?

139 J. Simons: Do you know how many people, who have existing two-family dwellings, have gone before the ZBA in
140 the last six years?

141 C. Foster: Currently we have 420 two-family dwellings and there are over 50 condex units. That means approx.
142 1000 families are affected by the Article that is in effect right now.

143 J. Simons: How many of those people have had to go before the ZBA in the last six years?

144 C. Foster: The problem with determining that is that the zoning bylaw is not being enforced. The Building
145 Inspector, in his opinion, says that there were no problems with the existing units at the time. The problem was with
146 the new units that were being brought in. So, he is continuing to issue building permits for work on the houses even
147 though they are non-conforming. Why eliminate two-family homes in one sentence and then allow them with a
148 special permit in the next sentence?

149 R. Rowen: Does the Article say they are not allowed 'as of right' or that they are not allowed?

150 C. Foster: They are removed from the permitted list.

151 J. Simons: What problem are you trying to solve?

152 C. Foster: We had a right to be there as two-family units and our rights have been taken away.

153 R. Rowen: When these houses were built they were conforming. We have declared after the fact that they are non-
154 conforming and it doesn't say 'by right'. People who built conforming residences now have to go through extra
155 steps if they want to modify their house where a single family house does not need to go through those same steps.

156 J. Simons: I am trying to quantify how big a problem it is.

157 C. Foster: Why were the existing two families made non-conforming? They weren't a problem. We propose the
158 existing two families be put back as an allowed use. Any two-family coming in should have to get a special permit.

159 J. Simons: Judy, we need to talk to the Building Inspector and the ZBA to get their opinions. It is a legitimate
160 point, but I think we need to go back and resurrect all the history of what we have done. We should have another
161 Public Discussion and a Public Hearing.
162 George Schruender, 91 Quail Run Lane, Is in the Real Estate Business and has run into some issues with the ZBA
163 on two-family houses. It comes up more importantly when there is an existing two-family that wants to do a lot of
164 work.
165 J. Simons: If you could summarize your facts and send them to Judy it would be a big help.
166 R. Rowen: Asked to resurrect what issue the Board was trying to solve at the time of the Amendment went forward.
167 It would be a help to the Board members that were not present at the time or do not remember the reason for it.
168 Bruce Allen: Owns a two-family and a single family and agrees with C. Foster and would like to see the
169 neighborhood protected without penalizing the owners of existing two-families.
170 J. Simon: Let's do this again in a couple of months so that we still have plenty of time before Town Meeting.
171

172 **J. Smolak to present proposed zoning change** for Fall Special Town Meeting 2010 regarding CDD2.

173 Judy: Drive-throughs are prohibited within all the CDD Districts (1, 2, and 3). Mr. Smolak is asking for a zoning
174 change for the Fall Town Meeting. He has submitted some specific language and there are a set of parcels being
175 looked at. One issue is the amount of uplands and wetlands on these parcels. The other thing for the Board to
176 consider is that we do have to schedule a Public Hearing for this proposal. We are required to notice it two weeks
177 prior.

178 J. Simons: We have talked about this CDD1 and CDD2 zoning area for a long time and we have tried to come up
179 with a solution that balances the interests of the landowners, abutters and town. It was challenging in this district
180 because a lot of the properties on both sides of the street are close to abutters, many are small properties, many do
181 not go back off the street very deeply, and in many cases there are wetlands. We ended up with what we think was a
182 reasonable solution. We continue to look at it and evaluate whether it makes sense for all the properties in this
183 district. It is important the have a very open process and transparency and we appreciate you coming in to discuss
184 this matter.

185 J. Smolak, attorney for Al McGregor: (John is present with Ben Osgood, engineer, John Pelich, project manager,
186 and Al McGregor, owner of the property). The proposal that we have is to amend the CDD2 provisions of the
187 zoning bylaw to allow for a bank to have a drive-through. Currently under Section 16 of the zoning bylaws for the
188 CDD2 district a bank is provided by right but without a drive-through. An overview of the site and surrounding
189 locations along Turnpike Street was provided. There is serious proposal from a bank with a drive-through facility
190 that is interested in the property. There is a long history of rezoning along Turnpike Street. With respect to this
191 parcel, in 2005 the site was divided by both Village Commercial and the Business 1 Zoning District which made it
192 very difficult to develop as a cohesive plan because of varying dimensional requirements. Back in 2005 and 2006
193 the Planning Board worked with the Planning Department to develop a plan for this corridor and the CDD district
194 was adopted at Town Meeting. In conjunction with the adoption of the district there was an amendment to the
195 zoning map. There are many constraints to development on the parcels within this district due to size of lots,
196 wetlands, flood planes, shape of lots, paper streets, ect. Many of these constraints exist on Mr. McGregor parcels;
197 however there are a number of distinctions that need to be made between these parcels and other parcels in the
198 district and across the street. First, the site contains close to two acres of upland area clustered along Rt114, thus
199 provides for a larger footprint than other parcels in the area. The parcels total about 7 acres, but the upland is
200 clustered around Rt. 114 which creates a separation from any neighborhoods in the area. The site has been an eye
201 sore over a number of years and this presents an opportunity to upgrade the area and set a tone for the corridor. We
202 are looking at a phased approach to the project. The bank with a drive-through (possibly one story or two stories)
203 would be the first phase and there would be a second phase that we would evaluate in the future. It is our goal to
204 have a development for this phase consistent with the uses within the CDD2 District.

205 Ben Osgood, Jr., project engineer. Reviewed a conceptual site plan for the proposed bank, ran through examples of
206 some architectural designs that might be applied to the site, and reviewed some landscaping elements. He has
207 compiled all existing information that Mr. McGregor has had completed over approximately the past five years. A
208 big portion of the parcel is wetlands, a previous wetland line is shown, and the property line is a brook that is
209 considered a river so there is a 200' river front area that we have stayed out of. The building, as laid out, has taken
210 into account the 50' no build zone and a 25' no disturb zone from the wetlands. We have designed a simple drive-
211 up bank. There is a front offset of 10' from the property line in this zone. We have pushed the building close to the
212 street and put the parking in the back as well as the drive-through. Drive-troughs typically have 3 or less cars in the
213 queue. The area designated for phase two was identified. Site distances to each surrounding dwelling were stated.

214 There is a natural buffer zone of woods and wetlands between the proposed building and the surrounding dwellings
215 so there will not be development in that area.
216 J. Simons: How far back does the upland go on this parcel vs. the upland on the parcels further up in the district on
217 both sides of the street?
218 B. Osgood: On this parcel it is probably 250 feet. It is deeper than any other site in the immediate area.
219 R. Rowen: How far from the edge of the pavement is the State right of way?
220 B. Osgood: I believe it is about 20'
221 B. Osgood: Displayed pictures of various banks from the area to present types of architecture and landscaping that
222 might be appropriate for the site.
223 J. Simons: How do you plan on doing this rezoning and how will you propose structuring it.
224 J. Smolak: Handed out copies of a proposed Warrant Article. In the Corridor Development District section 16 of
225 the bylaw we are proposing to add an additional use by special permit which would be a bank with a drive-through
226 within the CDD2 district on parcel or parcels collectively comprising at least five acres of land.
227 T. Seibert: What is the purpose of adding the 'parcel' or 'parcels' language in the proposal?
228 J. Smolak: Because there are separate lots there. We would at some point in the future combine them as part of the
229 ANR and special permit process. There might different financing for the bank verses another use on the property so
230 we would like to keep the parcels separate for financing purposes.
231 C. LaVolpicelo: How will you be presenting this at Town Meeting?
232 J. Smolak: We haven't decided that yet. I think we will gather the 100 signatures that we need to get this Warrant
233 filed and then proceed to the Public Hearing that will be required. Then we will decide on a presentation at that
234 time. We would love to have the Board sponsor the Article.
235 T. Seibert: verified the location and size of the district.
236 R. Rowen: If all the other parcels in the CDD2 district were combined would they even total 5 acres?
237 J. Smolak: I haven't calculated it but it is probably doubtful.
238 J. Simons: The way this is being set up is that they will need Site Plan Review for the building but they will also
239 need a Special Permit for the drive-through.
240 J. Simons: I always find it useful in the case of rezoning that is associated with a specific property to at least get
241 some idea of what can be done on the site because it gives you some idea if whether it will work or not.
242 R. Rowen: The onus would be on you need to be your own salesman. Clearly you know the history of requests for
243 drive-throughs along Rt. 114 and we have been dead set against it for a number of reasons for a long time. This is
244 the first time I have seen something that may be acceptable.
245 T. Seibert: Right now you have this going through a 50' no build zone with the second tier of parking in the back
246 parking lot. Why haven't you tried to put that to the left of the building or put it elsewhere?
247 B. Osgood: Again, this is a phase 1 and that's just to leave room for whatever might what to propose for phase 2
248 which would go more in the area of where the fence company is. My thought for those spaces is that there are
249 provisions in the bylaw to bank spaces and maybe some of those are the spaces that are banked.
250 Judy: Did the Board want to go into any more detail with regard to the wetlands?
251 J. Simon: It is my understanding that you are going to come back with further wetland delineation. Whatever that
252 says is going to determine what you can eventually do. Only to the extent that the delineation of the wetland is such
253 that it makes it very problematic to put a drive-through there and create queuing distance would we possibly have a
254 concern. We should address that question when we have the Public Hearing because we will have that information
255 right on the delineation prior to that meeting and we can answer that question reasonably definitively at that time.
256 B. Osgood: We are trying to provide as much information as we can and to do it economically. We haven't looked
257 at the wetlands yet. There are previous wetland delineations and we are confident that where we show them is
258 where they are at. We will do as much as we can and keep the economics in check as we go through the Town
259 Meeting process. The final wetland reviews would be done before we went to the Commission, if we did come to
260 develop the site.
261 J. Simons: I understand but I think we would like to have enough so that we can reasonably conclude that
262 something like this is doable.
263 Judy: There have been wetlands delineated since 2006 that you don't show.
264 B. Osgood: There was an isolated area there, that may be there now, but it wasn't large enough to be protectable
265 under the bylaw.
266 Judy: I am just trying to bring up an issue that down the road could be an issue with the Conservation Committee.
267 J. Simons: What I think we need to focus on now from the wetlands perspective is that is there anything we can see
268 in the wetlands delineation that would seriously preclude the ability to put a drive-through in.

269 R. Rowen: What we are discussing tonight is whether the proposed amendment to the zoning bylaw could be
270 supportable. Whether or not, if you came in for Site Plan Review, anything would ever be approvable is to totally
271 different subject.
272 John Casey (abutter), 84 Innis Street, Will there be an egress lane?
273 B. Osgood: we do depict a deceleration lane but it is just conceptual.
274 J. Simons: I would be surprised if the state didn't mandate it.
275 J. Casey: Have you checked with the state on whether they plan to enlarge the street in that area? They might not
276 like the building so close to the street.
277 R. Rowen: The right of way is 20' off the street and they would be 10' beyond that.
278 J. Casey: Do they town bylaws govern drive-throughs better than before so that we are not going to have a bank
279 turn into a Dunkin' Donuts like across the street?
280 J. Simons: No. It says bank explicitly.
281 Bill Wellock: 164 Hillside Rd, What was this property zoned before it became CDD2?
282 J. Smolak: It was a split zone. Village Commercial and Business 1.
283 B. Wellock: Was there allowed drive-thoughts then?
284 J. Smolak: Yes.
285 J. Simons: We have to schedule this for a Public Meeting. We should plan to do November 9, 2010.
286 Judy: We will have two weeks prior to advertise it and it would have to be in the Senior Center.
287 J. Smolak: We are trying to be as economical as possible in terms of going through the rezoning process then going
288 through the technical aspects of the project. We will do our best on wetlands but first we have to take the
289 delineation survey and then go through the formal process. I am not sure it will be complete by Nov. 9th but at least
290 we should have a comfort range for that.
291 J. Simons: I think it is better that you get the 100 signatures than that we do it.
292
293 **Peter Breen is here to ask for a Lot Release** for 99 Ogunquit Lane
294 Judy: I do have the bond information. The bank statement balance is over \$25K for Ogunquit Lane. For Rocky
295 Brooke Road there is a balance of over \$49K. I believe in this case there was a subdivision bond posted but the lots
296 where never released.
297 Peter Breen, 770Boxford Street. I have owned the land since 1976. I actually did build two houses there in 2000 so
298 I must have gotten a release somewhere---lot 11 and lot 12. I hot topped in April of 2000.
299 J. Simons: We were confused on how a house could have been constructed when the lot has never been released.
300 What are you trying to do and how many other lots are there under the covenant?
301 P. Breen: I am trying to close on this house, 99 Ogunquit Rd. There are 5 more lots in addition to this.
302 J. Simons: In order to get the street accepted at Town Meeting how much more work do you have to do?
303 P. Breen: I would have to put the final coat of hot top on.
304 J. Simons: My inclination is authorize the release of this particular lot subject to the Town Planner's review and just
305 make sure everything is in order and in balance on this.
306 **MOTION**
307 R. Rowen: I move to approve the lot release for lot 5on Ogunquit Rd. subject to review by the Town Planner that
308 the town is adequately protected with other lots that have not been released plus the existing bond. T. Seibert
309 seconded the motion. The vote was unanimous.
310
311 **Planning Board Bond Balances:**
312 J. Simons: We have 1.8 million dollars worth of bonds in the Planning Department. We should make some attempt
313 to close them out if the street has been accepted. Maybe you can notify some people after doing a cross check to see
314 if the street has been accepted. Most of them are subdivisions. There are some very old subdivisions.
315 Judy: I would say that for most of them the streets have not been accepted.
316
317 **MOTION**
318 R. Rowen moved that Oct. 5, 2020 minutes be approved, as amended. T. Seibert seconded the motion. The vote
319 was unanimous.
320
321 **MOTION**
322 R. Rowen moved the meeting be adjourned. T. Seibert seconded the motion. The vote was unanimous.
323
324 The meeting adjourned at 9:13 pm.