

May 18, 2010

The regular meeting of the Andover Township Land Use Board was called to order at 7:30 p.m. on Tuesday, May 18, 2010 by the John O’Connell, Chairman.

Present: Members Suzanne Howell
 Gerald Huelbig
 Gail Phoebus
 Rick Melfi
 Ellsworth Bensley
 Christine Kretzmer
 Paul Messerschmidt, Alt. 1
 John O’Connell

Secretary T. Linda Paolucci

Absent: Diana Boyce
 CeCe Pattison
 Rourke Day, Alt. 2

Professionals Present: Attorney - Richard Brigliadoro, Esq.
 Engineers – Robert Guerin P.E. – left at 8:30 p.m.
 Joseph Golden, P.E.- arrived at 8:35

FLAG SALUTE - RULES - OPEN PUBLIC MEETINGS ACT

OPEN TO THE PUBLIC – The Chairman opened the meeting to the public and read the rules of the act.

SKYLANDS LLC, Block 111, Lot 3.02 – Preliminary & Final Site Plan –

Gail Phoebus and Christine Kretzmer recused themselves from this portion of the meeting. Debra Lynn Nicholson, Esq. stated that she is representing the applicant. Stephen Gloria, M.D., the applicant, and Michael Kolody, P.E. were both sworn in by Richard Brigliadoro, Esq.

Kolody gave an overview of the application and stated that there are no plans to change use, occupancy or height with regard to the application. The intent of the application is to add some parking spaces. Kolody went over the history of the shared parking area and the adding on of additional parking behind the main structure near Drakes Pond. After Board discussion and questions for the engineer with regard to some of the issues such as landscaping, signage, impervious coverage, drainage, the providing of an As-Built at completion of project, etc. and no questions from the public, the chairman asked for a motion to approve the preliminary and final site plan and “c” variance.

Motion made by Messerschmidt, second by Huelbig. In favor: Howell, Huelbig, Melfi, Bensley, Messerschmidt, O’Connell. Opposed: None. Recused: Phoebus, Kretzmer. Motion carried.

Chairman O’Connell announced that the Board would take a break at 8:25 p.m. and returned from break at 8:35 p.m.

RESOLUTION - MARSHALL/GALLAGHER/RUSSELL, Block 120.01, Lots 5, 4 & 12.05 – Minor Subdivision/Lot Line Adjustment.

Chairman O'Connell asked for a motion to approve the resolution for minor subdivision/lot line adjustment. Motion made by Bensley, second by Howell. In favor: Howell, Huelbig, Melfi, Bensley, Messerschmidt, O'Connell. Recused: Phoebus, Kretzmer. Opposed: None. Motion carried.

RESOLUTION -NEWTON COUNTRY CLUB, Block 111, Lot 6 – Site Plan

Waiver. Chairman O'Connell asked for a motion to approve the resolution for the site plan waiver recommended by the township engineer. Motion made by Huelbig, second by Melfi. In favor: Howell, Huelbig, Melfi, Kretzmer, Bensley, Messerschmidt, O'Connell. Opposed: None. Recused: Phoebus. Motion carried.

RESOLUTION – CONFLICT COUNSEL – Michael J. Hanifan, Esq.

Chairman asked for a motion to approve resolution for conflict counsel. Bensley made a motion, second by Kretzmer. In favor: Howell, Huelbig, Phoebus, Melfi, Kretzmer, Bensley, Messerschmidt, O'Connell. Opposed: None. Motion carried.

SPECIAL CONFLICT COUNSEL – Thomas Germinario, Esq. – Extension of contract for amount not to exceed \$7,000.00 – Chairman asked for a motion to approve the resolution. Motion was made by Phoebus, second by Howell. In favor: Howell, Huelbig, Phoebus, Melfi, Kretzmer, Bensley, Messerschmidt. O'Connell. Opposed: None. Motion carried.

BOARD DISCUSSION – O'Connell asked Land Use Board Engineer, Joe Golden, to go over the summary of the steep slopes ordinance. Golden commented on what the original intention of steep slopes ordinance was. In summary, he stated, there is an opportunity to either “tweak” the ordinance some, or an opportunity to start to reconsider the ordinance. Golden stated that it appears that the Board is looking just to tweak the ordinance. O'Connell advised the Board of the current funding situation and the expenses that go along with rewriting the ordinance. Golden said that he will be making some recommendations without the use of any major re-writes at this time. Golden went over the details with the Board of a copy of a memorandum of a situation that an applicant is having with the steep slopes disturbance as it pertains to his property and to potential removal of his vegetation for access the actual construction. Golden explained that if you count the disturbance of the area outside of where the actual construction is the applicant exceeds the threshold where a waiver can be given for the steep slopes ordinance, this is the jest of why it is being brought to the committees' attention. Golden went over McGroarty's memo dated February 5, 2010 with regard to proposed modifications to Chapter 190 Zoning/§190-32.3 Steep Slope Areas with the Board members and said that the first point of concern is that in referencing 1,500 sq. feet of total site disturbance there seems to be some ambiguity, or not clear, on total disturbance and what it all means. Joe stated that Chuck McGroarty has put in a recommendation for a potential cure for this revised exemption and to talk about what “disturbance” is meant to be. What McGroarty interpreted is that the 1500 sq. feet of disturbance would be slopes over 20%, but in fact, that number whenever it was originally discussed was just talking about a disturbance of any sort before you have to consider whether there is a steep slope issue. The vision is always to consider the slopes coming towards the house, whereas in fact you must also address the slopes going away from the house, Golden stated. Therefore, he said, the number was thought about with various

opinions on what the number should be and what would be a reasonable number to add an addition on to a house, an extra room or a swimming pool, etc. and through extensive discussion it was set that fifteen percent would be the threshold. This appeared to be fine, he continued, except that when an application such as for a swimming pool, the applicant just uses a tax map sketch, sketched on it where the pool will be going and gives that sketch to the construction official. Then when the construction official goes to the site he cannot make a decision on whether it is fifteen percent or twenty percent slopes visually, therefore, he would need some level of a survey in order to aid him in making that decision. Golden continued that what he believes is a solution to the first part of the situation is if disturbance of the vegetation is outside the construction area, the applicant should bring in a narrative stating how they intend to restore the area that will be disturbed. The construction official can then make a determination as to the soil restoration in conjunction with the soil erosion and sediment control regulations, to which he is caretaker for. The second part of the solution, Golden continued, is that there is a Steep Slopes Waiver application that he and the Land Use Board Secretary have gone over and someone can apply for the exemption. Golden stated that he will be able to then go to the property and make an engineering decision on whether or not the applicant has exceeded the threshold and whether or not the applicant needs to come before the Board. Therefore, he continued, if there are no other issues such as site plan, set backs or further disturbance, with both of these requirements in place (narrative and site plan waiver) the applicant can be granted a waiver so that they will not have to come before the Board, which will be less onerous on the applicant. Golden said that this simple type of application should not require a modification to the ordinance, but instead the Board can draft a memorandum to the administrator and the construction official conveying the wishes of the Board as to procedural matter for simple residential situations, such as pools, additions, etc. and allowing the construction official, along with the Land Use Board Engineer if necessary, to make the determination case by case as to total site disturbance and requirements.

There was further discussion with regard to the steep slopes ordinance and clarification of disturbance.

The chairman asked for a motion from the Board to have the memorandum drafted with the Board's instruction and their interpretation for the construction official to clarify the existing ordinance in terms of what the total disturbance area means. Motion made by Bensley, second by Phoebus. In favor: Howell, Huelbig, Phoebus, Melfi, Kretzmer, Bensley, Messerschmidt, O'Connell. Opposed: None. Motion carried.

There was also discussion regarding discrepancy in the steep slopes ordinance. Board members asked if the discrepancy can just simply be crossed out within the ordinance. Brigliadoro stated that we recognize that there is a discrepancy in the ordinance but the Board is obligated to apply the ordinance as written, but in this instance I am sure that the township attorney can draft a very simple ordinance indicating that whatever the section is Chapter 131, Section 2b is amended to delete *15 percent* and revise it to 20 percent and all other terms and conditions of the ordinance remain in full force and effect. Brigliadoro suggested a memorandum which includes *Item #4. Defining steep slopes* of Chuck's February 5, 2010 title *Proposed Modification to Chapter 190 Zoning/§ 190-32.3 Steep Slope Areas* to the Township Committee. Phoebus asked if we are suggesting only revising one paragraph, not revising the entire steep slope ordinance. Brigliadoro said "yes".

Motion was made to send a memorandum to the Township Committee with the Board's suggestion for possible revision of the Steep Slope Ordinance. Motion by Phoebus, second by Huelbig. In favor: Howell, Huelbig, Phoebus, Melfi, Kretzmer, Bensley, Messerschmidt, O'Connell. Opposed: None. Motion carried.

Golden spoke of another item of discussion regarding the site plan waiver process. He stated that he spoke with the Board secretary and thinks that the Board has been handling this to

date a little bit differently than what it was intended as well. He stated that the draft ordinance from 2008 explains the intention of the handling of the site plan waiver but believes that this ordinance was never formally adopted. He said that he believed that the ordinance was stopped because at that time the Board ran out of money so it got put on the shelf and it never passed. The intention of this ordinance is very much similar to that of the slopes ordinance with regard to appearance before the Board. Does an applicant actually have to come before the Board if in fact I can look at it and it meets the criteria which are established by exemptions to allow the engineer to grant the waiver. Golden commented as to *Item b* of the ordinance which was interpreted by the previous attorney which says: *the reviewing board may waive site plan.....* The discussion was can the Board appoint the engineer as the Board's representation and counsel felt, not really, not as it is written, as it is written it states that the Board can only grant the site plan waiver. Briigliodoro stated that he believed that based upon that, the process that this Board was going through was "Joe you would review it, you write the report, it would come to us and basically the Board will go along with whatever you said." Golden agreed and stated that its intention was more for it to be a "pass through" but what we are finding is that we are starting to get a lot of questions where I am not addressing all of these questions because items of conformity Jim Cutler has already approved. I wanted to bring to the Board the intent of the site plan waiver application and the only procedural delay is that we cannot grant the waiver until it has come to the Board and is granted by vote of the Board and then a resolution is written as well. Briigliodoro stated that the point is the same as talked about before as a paragraph can be done for minimal expense by the township committee doing the claritory ordinance which will solve the one problem with the steep slopes and the Board clarifying its position on how to interpret it to Jim Cutler that will solve the issue of the slopes along with this matter. The recommendation is for the Board's consideration to take one more look at what has been presented to you for discussion at our next meeting and will get the original and look at to clean up and be prepared for a vote at next meeting so not to present the slopes and site plan waiver until the next meeting so that they can be presented to the township committee at the same time.

The Board Secretary presented and gave an overview of a copy of a new format for new businesses to apply for zoning permits when there is no change of use, which if a change of use would otherwise require a site plan. Briigliodoro gave the Board three different examples of how other municipalities handle new businesses coming to town. What I am trying to show you is three different examples, one is filling in the application information for a zoning permit and if it fits our zoning and there are no variances required issue a zoning permit and let him go; the other is everyone comes in to the Board for every commercial use whether it is the same use but just changing owners; if it is a minor change and the zoning permit works, but if it is over 5,000 sq. ft. then it must go before the Board, he stated.

There was further discussion with regard to the format of the new zoning permit for businesses and it was agreed by the members of the Board to utilize the new form. The Board took a vote to allow the Board Secretary to send a memorandum to both the administrator and the construction/zoning official with regard to using the new business zoning permit form where applicable. Motion made by Phoebus, second by Bensley. All are in favor. Opposed: None. Motion carried.

Phoebus spoke of businesses that are in Andover and how far we have come. She spoke of the contributions of the Economic Development Committee. Phoebus said all the good things that are currently happening, such as the wonderful responses for contributions to Andover Day from the business owners.

PUBLIC PORTION – No one from the public stepped forward and the public portion was closed.

VOUCHERS - See Schedule A. A motion was made by Phoebus, seconded by Howell to approve the vouchers submitted. All in favor: Aye. Opposed: None. Motion carried.

OLD/NEW BUSINESS – Bensley questioned Golden about lot line adjustment applications and when an applicant has to come before the Board as he was a bit confused from a statement from a member of the public with a recent application. Golden stated that the ordinance is clear for a lot line adjustment application in order for an applicant to apply for a lot line adjustment it must involve just two lots, anything more than between two people, they must submit the paperwork that includes information for a minor subdivision as well as the lot line adjustment.

Phoebus asked the professionals whether or not they have any information on the status of WaWa. Golden said that he has been asked to provide information to the DEP with regard to the obtaining of permits. Briigliodoro stated that he spoke with Wawa’s attorney, Tim Prime and he has indicated that he is still looking to go forward but it is the company’s decision.

There was discussion with regard to summer hours for July and August and holding only one meeting for those months. The meetings of the Board will be held only for the second meeting dates in July and August. Motion made by Phoebus, second by Howell. All in favor: Aye. Opposed: None. Motion carried.

MATERIAL RECEIVED, GENERAL INFORMATION - See Schedule A

RESOLUTIONS – Resolutions adopted during this meeting are made a part of these minutes by referral to the specific file.

ADJOURNMENT – Time 9:47 p.m. A motion was made by Melfi, seconded by Huelbig, to adjourn. All in favor. Carried unanimously.

Respectfully submitted,

John O’Connell, Chairman

T. Linda Paolucci, Secretary