



Town of Pepperell

Planning Board

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MINUTES

Monday, August 10, 2009

Pepperell Town Hall

Members Present: Nick Cate, Dennis Kane, Mark Marston, Rick McHugh, Steve Themelis

Members Absent: None

CALL TO ORDER:

Mr. Cate called the meeting to order at 7:03pm.

VOUCHERS:

- None were signed.

ACCEPTANCE OF MINUTES:

- The Board M/S/V to approve the minutes of July 22, 2009.
- The Board M/S/V to approve the minutes of July 27, 2009.
- The Board requested a revision to the minutes of July 22, 2009 Executive Session.

BUILDING &/OR OCCUPANCY PERMITS:

- None

ANR PLANS:

- None

ACTION/DISCUSSION ITEMS:

- North Village Estates – Progress Reports
The Board was pleased with the progress at North Village Estates. Several e-mails that had gone back and forth between the developer on the Town Engineer were reviewed. The Board was asked if they would like to be present at the punch list walk through with Peter Shattuck and Bob Lee. A couple of them said they would attend if available. It was agreed that the time would be sent via e-mail to the members so they could attend if they chose to and also a copy of the as-built review will be sent in the e-mail.

APPOINTMENTS/HEARINGS:

- **7:00pm – Joint Election with Board of Selectmen – Appoint Associate Member**

The Board moved to the Selectmen's meeting room. Mr. Cate made a motion to appoint Steven Brittain to another term as the Associate Member of the Planning Board with a term to expire on June 30, 2010. Selectman McNabb seconded the motion. All Selectmen voted 'aye' and all Planning Board members voted 'aye'.

- **7:05 – Joint Meeting with Board of Selectmen – Request Special Counsel**

Mr. Cate summarized for the Selectmen the status of the appeal of 75 Groton Street. He stated they had reviewed the court's decision and after meeting and discussion with the Building Inspector had agreed to dismiss the case and not pursue the appeal any further. He explained that recent bylaw amendments approved at town meeting addressed some of the concerns of this type of permit being granted in the future by the ZBA. He stated that the Building Inspector will still need to uphold the decision of the ZBA and in order to do this he will likely need to consult with an attorney to ensure the legality of his enforcement. Mr. Cate stated that Town Counsel, Ned Richardson, had represented the ZBA in this case and that he would have a conflict of interest in aiding the building inspector with his enforcement orders, therefore, the request would be to retain the use of special counsel, Heathers Kingsbury, of Brackett & Lucas, who had represented the Planning Board and Building Inspector in the appeal.

Selectman Sergi read the letter that was issued by Ms. Kingsbury regarding the request to retain her services and the maximum expenditure of \$1,000 to assist the building inspector. It was questioned why the Planning Board and Building Inspector are trying to continue this case. Mr. Cullinan stated the purpose was to enforce the zoning as written.

Ms. Kingsbury stated that the judge had declined to make a decision in this case and after reviewing the options the parties felt it best to let the original decision stand and to ensure enforcement of that decision.

Mr. Sergi asked if this could be accomplished without legal help. Mr. Cullinan stated he would require legal advice to make certain his enforcement orders were within the parameters of the decision. Ms. Kingsbury stated the plan was for the building inspector to inspect the premises for compliance once permits were issued and then a legal review would be provided of any enforcement orders. Mr. Cullinan confirmed that no permits had yet been granted. It was explained that the applicant had tried to obtain the original decision from the Town Clerk but that no order had been received yet stating the case was dismissed and therefore the applicant would not be applying for permits until she gets her original decision and files it at the registry.

Mr. Cate explained that this request is only for the purpose of the 75 Groton Street and their may be building code issues that Harry would need to address and if he wants or needs advice he should be able to have counsel.

Town Administrator, Bob Hanson, agreed that town counsel clearly has a conflict of interest and that the Selectmen should appoint the special counsel for the Planning Board.

Selectman McNabb stated he felt the subject business was a very small business that is only open a few hours a week and that the applicant has already been through the process.

Mr. Cate stated that if one board appeals another that it should be that both use separate counsel instead on town counsel. Mr. Hanson stated that town counsel was obligated to represent the ZBA.

Selectman McNabb stated he wished to go on the record that he feels this is a witch hunt. Mr. Marston responded that by disregarding this it could set a precedent or the

owner could come back and request longer hours. Selectmen McNabb asked how the hours could be extended and he was told they would have to go back to the ZBA with the request.

Selectmen Sergi questioned what the Building Inspector would do outside this case if he needed legal advice. Mr. Hanson stated he would call town counsel directly after requesting an approval to do so from him. It would be the same time involved and this use of special counsel would not cost additional it would just be regular legal costs.

Selectman McNabb asked if this case would end. Mr. Cullinan stated that no permits have been requested but he can issue a ticket or a cease and desist. Mr. Cate stated that they are waiting to proceed cautiously.

Selectman Hallisey stated to Mr. Cullinan that it appears he is following the letter of the law and he should be allowed to have legal counsel.

Selectman Hallisey made a motion to authorize the use of special counsel, Bracket & Lucas, for an amount not to exceed \$1,000. Selectman McNabb seconded the motion. Selectman Sergi and Hallisey both voting 'aye' and Selectman McNabb voting 'nay'.

- **7:15pm – Public Hearing – SP2009-04** – Application for Special Permit under Section 9300 of the Zoning Bylaws on property located at 13 Deerfield Drive shown on Assessors Map 11 Lot 166. Applicant: Rui Monteiro, 13 Deerfield Drive, Pepperell, MA 01463.

Mr. Cate opened the public hearing at 7:50pm and explained the procedures of the hearing and confirmed all payments had been made.

Mr. Themelis read the legal notice for the record and also read a statement that the applicant's address was stated at 16 Deerfield in the notice and should have been 13 Deerfield but that the project location was stated correctly as 13 Deerfield in the notice.

Mr. Cate stated the purpose of the hearing, an application to amend the special permit for the cluster development where the setbacks had been established by this permit at 25 feet in the front.

Mr. Monteiro stated he wished to build a farmer's porch on the front of his house at 13 Deerfield Drive. He stated the porch would be 7 feet deep on the front and the side of the house but would not fit at that size into the 25 foot setback. He stated that if he built a porch to fit within the setback it could only be 5 feet deep.

Mr. Cate explained that the cluster development special permit established the setback at 25 feet within the development and that any change to that setback would require that the Board amend the original special permit. The request was for a new setback established as 23.8 feet. The Board questioned if this would include any steps to the porch. Mr. Monteiro stated that there would be only one step up to the porch. The Board felt that to allow for a step and any roof overhang the setback should be established at 23 feet and should be an amendment only for this lot.

Mr. Themelis read the comment from Bob Lee regarding measuring from the right of way instead of measuring from the edge of pavement. Other boards and departments had no comments.

The Board M/S/V to close the public hearing.

ACTION/DISCUSSION ITEMS:

- SP2009-02 – Pepperell Pharmacy – Decision
The Site Plan Review Permit was reviewed for the expansion of the Pepperell Pharmacy. Mr. McHugh made a motion to endorse the Decision with Mr. Kane

seconding the motion and all members voting 'aye'.

CORRESPONDENCE & DISCUSSION:

A Mr. Bancroft was present to question the Board about a land swap on property on Mt. Lebanon Street. He had a surveyed plan of a lot that his daughter intended to purchase that showed an encroachment of a driveway turnaround on this property. He stated that the owners of the driveway were willing to do a land swap to correct the problem. It was discussed that a barn located on the property being sold was non-conforming and it might be wise to bring that into conformance however it might take a considerable larger amount of property to do so. The Board informed him the next meeting would be September 14th and that an ANR plan could be presented for signature at that meeting.

CLOSE MEETING:

With no further business to discuss the meeting was adjourned.

APPROVED:

Nicholas A. Cate

Mark F. Marston

Dennis A. Kane

Richard C. McHugh, Jr.

Stephen C. Themelis