



# Town of Carlisle

MASSACHUSETTS 01741

Office of

## PLANNING BOARD

### MINUTES

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### MINUTES

November 22, 2004

#### Minutes

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**Public Hearing for request for Common Driveway Special Permit at 70 Orchard Acres (Map 27, Parcel 23), Mark Lemos, applicant**

**"Informal conceptual plan" for development of 51.2 acres of land with frontage on Cross and Bingham Streets**  
**Continued Public Hearing for requests for two Common Driveway Special Permits at 967 West Street (Benfield Parcel B: "Apple Grove Lane,") Map 5, Parcels 47, 47A, 47B, 48, & 51) and parcels adjacent to 894 West Street Benfield Parcel C: "Hobblebush Lane," Map 5, Parcels 17, 17-1, 17-2, 17-3, & 17-4), Northland Residential Corp., applicant**

**Request for review of the Comprehensive Permit Application for "Carlisle Woods," adjacent to 926 Maple Street at Billerica town line, application of Massapoag Real Estate Development Corporation (Request of Zoning Board of Appeals)**

#### Scenic Roads

**ANR plan for Tophet Road, Carleton Road and East Riding Drive, Map 23, Parcels 22, 23, 31, and 32, James P. Byrne, applicant**

#### GIS

#### Pictometry

**Executive Session to discuss litigation regarding Berry Corner Lane**

PB Chair **Louise Hara** called the meeting to order at 7:30 p.m. in the Clark Room at Town Hall. Board members **Rich Boulé, David Freedman, Kent Gonzales,** and **Peter Stuart** were present, along with Planning Administrator **George Mansfield**. PB Administrative Assistant **Helen Boos** was also present, as well as **Dave Ives** of the *Mosquito*. Phyllis Zinicola and Ray Bahr were absent.

#### Minutes

The minutes of the last meeting were reviewed. Freedman moved to **accept as amended the minutes of November 8, 2004**. Stuart seconded the motion and it carried 5-0.

#### Budget

No unanticipated expenses.

#### Capital Improvement Plan

The PA had provided slides of the presentation on the new Capital Improvement Plan to Board members, for their information. He explained that the Long-Term Capital Requirements Committee is asking that requests for capital spending (over \$10,000) that will be in the form of warrant articles for the spring Town Meeting be submitted to the Town Administrator as soon as possible.

#### Public Hearing for request for Common Driveway Special Permit at 70 Orchard Acres (Map 27, Parcel 23), Mark Lemos, applicant

**George Dimakarakos** of Stamsky & McNary was present to present the plan, as were neighbors **Suzanne and Farhad Vazhegoo** of 41 Orchard Acres, **Marjorie Johnson** of 61 Ember Lane, and **Lois Adams** of 73 Orchard Acres. Also

present was **Don Ellard** of Belmont, MA, who informed the Board that he is interested in purchasing 70A Orchard Acres.

Hara informed Dimakarakos that, according to regulations, the Board needs five votes to grant a special permit, which means that, with only five Board members present, all five would have to vote in favor in order for the special permit to be granted. Furthermore, that if the hearing has to be continued, the same five present at this hearing would have to be present at any subsequent hearings. Despite the attendance numbers, Dimakarakos opted to proceed as planned.

Dimakarakos explained that this plan requires no building, and that the special permit is required only to make the current access conforms to the zoning bylaw, specifically 5.4.2 that a driveway to a house be located on its own lot unless subject to a common driveway special permit; that the property at 70 Orchard Acres has recently been subdivided into what is now shown on the plan as 70A and 70B, according to dimensional requirements of the Carlisle Zoning Bylaw, and that, because of frontage requirements, most of the existing driveways falls within the new lot, 70B; that the special permit would allow the existing driveways to remain; and that if this permit were not granted, the alternative would be to build a new, separate driveway to the existing house on 70A.

As a precedent in such a case, the PA pointed to Hutchins Road, Lot 3, where the alternative driveway would have had to cross wetlands. The difference is that that driveway had not been built yet.

**Suzanne and Farhad Vazehgoo**, neighbors speaking on behalf of several neighbors, asked that the common driveway special permit be granted simply because it works well the way it is, and that adding a new driveway would degrade the beauty of the area. Mr. Vazehgoo also asked if there is a way to prohibit future owners of the new lot from later adding a new driveway.

**Don Ellard**, a potential buyer of the new lot, said that the alternative driveway would require some stone wall to be removed, trees to be cut, and a driveway built through the existing apple orchard, which he said he thought would be unattractive from the neighbors' point of view.

The application letter from William McNary of Stamski & McNary, Inc, requested that if this common driveway special permit is granted, that the Project Review Fee be waived, since the application does not actually involve any new construction.

Freedman moved to **waive the Project Review fee**. Boulé seconded the motion, and it carried 5-0.

Freedman stated the Board's findings: that the existing driveways have adequately served lot 70A and would continue to do so; that neighbors are in favor of using the existing driveway as opposed to an alternate driveway that would negatively impact the orchard and stone wall; that there is a provision made that says these driveways would serve only lot 70A, and that any access to lot 70B would be through a new and separate driveway; that the Covenant (Driveway Maintenance Agreement) has the requirement that the owners of Lot 70A will be solely responsible for driveway maintenance; that the Covenant will be amended to include the essence of the third paragraph of the letter from the applicant to the PB ("Any conveyance of lot 70B shall be required to prohibit lot 70B from using the driveway serving lot 70A. Lot 70B shall have its own exclusive driveway."); that there is a condition of the special permit that existing access to the drives will be the only access to lot 70A and no additional access driveway shall be permitted; and that both drives will be numbered, and that this common driveway will not be named.

Freedman moved to **grant the Special Permit for the Common Driveway on 70 Orchard Acres as shown on the Plan of Land in Carlisle prepared by Stamsky & McNary dated October 18, 2004 for Lemos**. Gonzales seconded the motion and it carried 5-0.

Freedman moved to **close the Public Hearing for the Common Driveway Special Permit at 70 Orchard Acres**. Stuart seconded the motion and it carried 5-0.

**”Informal conceptual plan” for development of 47 contiguous acres of land with frontage on Cross and Bingham Streets**

**George Dimakarakos** of Stamsky & McNary presented the plan on behalf of the developer **Bill Costello** (also present).

Dimakarakos first explained that in creating the alternative plans, the developer and engineers took into consideration the concerns of the neighbors (a meeting with the neighbors had been held to determine and incorporate their concerns); the number of driveways opening onto Cross Street; the appearance of the new development and the fact that Cross Street is a Scenic Road; the existing trail on the property (which used to be a named road and may be of some historical significance); and the overall fit.

Dimakarakos went on to explain the three alternative plans under consideration, two of which are allowed under zoning:

The first plan envisions a conventional subdivision: a road from Cross Street through the property to Bingham Road, two wetland crossings, nineteen lots with five driveways on Cross Street and the remainder on the new road. In order to conform to subdivision regulations adopted in 1998 and 2002, this plan would require extensive work, including either some blasting or a great deal of fill to fulfill grade requirements.

In the second plan, there would be no new road and therefore no need for subdivision approval or special permits; all lots would be ANR. This plan proposes a total of fourteen new lots, with thirteen driveways onto Cross Street, and one onto Bingham Road. There would be a number of driveway wetland crossings, and one of the driveways would follow the route of the existing trail/former road. Fourteen ANR lots of this plan were presented as the base number for determining the number of lots for the third, conservation cluster, plan.

The third plan involves a conservation cluster for a total of fifteen lots with five open space parcels and three common driveways, one of which would follow the route of the existing trail/former road. (The “trail” would still be open for public use, and at the upper end of the driveway, would be diverted to a new access point on Bingham Road.) Another common driveway would be built over the driveway of an existing house on the property. Common driveways are proposed to be eighteen feet wide with two-foot shoulders and grades limited to maximum of 10%.

Associate Board Member **Tom Lane** arrived at 8:50.

Dimakarakos asked the Board for an overall evaluation of the plans from their point of view. Lane checked to see if his property falls within 300 feet and whether his comments would be a conflict of interest. Members expressed concerns about road grades, especially in regards to any curves in the road. Other concerns were the location of cisterns (that they do not disturb wetlands), easements, the number of access points on Cross Street, and unresolved issues concerning road and cul-de-sac needs in the case of a fire emergency. Hara stated a preference for the third plan because it had a buffer of several hundred feet between the street and houses, and because it had a minimum number of roadway access points onto Cross Street. This in turn better protects the wetlands and helps preserve the scenic road.

Gonzales explored the possibility of two common driveways ending in cul-de-sacs along the same route as the proposed subdivision road and eliminating the proposed three new lots on Cross Street, wondering if the two common driveways might serve all the necessary lots while reducing the number of access points and the amount of road surface. Costello pointed out that the width and location of the subdivision road (or what would be cul-de-sacs) entails extra construction costs and that those three lower lots on Cross Street are needed to offset the higher construction costs for road construction. Dimakarakos raised the point that common driveways are not permitted to be longer than 1,000 feet.

**Continued Public Hearing for requests for two Common Driveway Special Permits at 967 West Street (Benfield Parcel B: ”Apple Grove Lane,” Map 5, Parcels 47, 47A, 47B, 48, & 51) and parcels adjacent to 894 West Street (Benfield Parcel C: ”Hobblebush Lane,” Map 5, Parcels 17, 17-1, 17-2, 17-3, & 17-4), Northland Residential Corp., applicant**

**Frank Stewart** of Northland Residential Corporation with **Rob Gemma** of MetroWest Engineering were present. Also present were **Greg Peterson** of 63 Indian Hill Road, **Ken Harte** of 64 Estabrook Road, and **Steve Tobin** of 164 Partridge Lane (representing the Trails Committee).

Commenting on the plans dated September 29<sup>th</sup>, Gemma explained that the only significant changes are the relocation of the catch basins as recommended by Nitsch Engineering; and that the plans incorporate Maurice Pilette's recommendation that they increase the dry hydrant line on Apple Grove Lane from eight-inch to ten-inch. Also, Stewart has made changes in the deed covenants to ensure that the road shoulders are maintained and kept clear.

The remaining substantial open business was to have Pilette respond to the Fire Chief's concerns as stated in his letter of October 25. Pilette responded in writing and also spoke with the Fire Chief personally to better understand the Chief's point of view. Consensus was not reached; Stewart, however, decided to continue with the plan. Expressing confidence in the system, Stewart said he has built other dry hydrant systems in other locations in the area, citing one example at Lake Winnepesaukee. Stewart explained that that system uses an eight-inch pipe that runs about 200 feet to the lake with a rise of about fifteen feet from the elbow to where the pump pulls it, and it is completely functional. In terms of safety issues, Stewart pointed out that they are also building a cistern system across the street from this proposed common driveway, where currently there is nothing in that neighborhood. In any case, the Fire Department will test the system when it is complete; only at that time can they provide the evidence that the system will function as planned.

The Board then reviewed draft conditions prepared by the PA. General conditions number 1, 2, and 3 are standard:

1. No lot shall be accessed by any means other than this common driveway.
2. That applicant shall submit an As Built plan demonstrating compliance with the approved special permit.
3. No building structure or portion thereof located any lot served by this common driveway shall be occupied until there shall have been filed with the Town Clerk the Building Inspector and the Planning Board a statement by the Boards consulting and certifying finished grades and final construction details of the common driveway have been constructed in accordance with the approved plans and with standard engineering practices. That is in lieu of a bond or any other performance guarantee.

Hara brought up issues of driveway completion, saying that past cases have led to some very difficult situations. The problem starts because there typically comes a point when a driveway has been built, the first home has been sold and is ready for occupancy, but builders are reluctant to put the top coat on the driveway because the construction trucks and equipment still working in the area will damage it, the problem being that the certificate of occupancy cannot be issued without a bond or some other method to cover completion of the roadway. In some previous cases, the driveway was never finished and was left, inappropriately, for the new homeowners to finish themselves; in other cases, the new home was completed but the new homeowners had to wait a disproportionately long period of time for the driveway to be completed in order to obtain the certificate of occupancy and move in. Stewart explained that they work with the buyers of the properties and establish an escrow up front, putting money so that the driveway can be re-sealed after construction (because there is no guarantee when these homes are going to be built; someone could buy one of these sites and not build on it for ten years). He made the point that the certificate of occupancy is different than the transfer of title but expressed no concern with the condition as worded.

Other conditions:

4. The Declaration of Covenants and Restrictions and the Declaration of Trust will be amended to insert the language contained in Stewart's letter of November 2, 2004.
5. Three stone bounds with eighteen-inch exposure will be place on the non-buildable restriction line as shown on the plan for Apple Grove Lane.
6. At the completion of construction and before any occupancy permit is granted for any structures on any lot served by this driveway, the Carlisle Fire Department shall inspect and test the dry hydrant to determine that it has a minimum drawing capacity of 1,000 gallons per minute.
7. The applicant shall improve the trail with a boardwalk through the wetlands within the existing easement and provide stairs for means of safe access from the street, under the direction of the Carlisle Conservation Commission and the Carlisle Trails Committee.

Discussing the boardwalk, **Steve Tobin** of the Carlisle Trails Committee reported that Trails Committee members walked the route of the proposed boardwalk and wetland crossing and determined that the size and location of boulders in the area will ensure a creative boardwalk design.

8. If so directed by the Carlisle Board of Selectmen and the Carlisle Superintendent of Public Works the applicant shall remove a portion of ledge within the West Street right-of-way opposite the Apple Grove common driveway to allow a three-foot shoulder.

9. The individual private driveway serving Lot 3C shall be accessed directly from the cul-de-sac circle at Hobblebush Lane.

Findings:

1. The common driveways are preferable to eight individual driveways accessing onto a scenic road.
2. With the conditions stated, the common driveways provide sufficient access for fire, police and other emergency vehicles.
3. The special permit assigns responsibility for maintenance, snow removal, drainage and adequate water supply in case of fire.
4. Common driveways and trail easements provide safer access to the trails than individual driveways would and, additionally, improve the safety of West Street.

Freedman moved to **approve with conditions and findings as previously stated the Common Driveway Special Permit for Hobblebush Lane as per plan prepared by MetroWest Engineering dated February 10, 2003, with revisions through November 10, 2004 prepared for South Street Nominee Trust.** Boulé seconded the motion and it carried 6-0.

Freedman moved to **approve with conditions and findings as previously stated the Common Driveway Special Permit for Apple Grove Lane as per plan prepared by MetroWest Engineering dated February 10, 2003, with revisions through November 23, 2004 prepared for South Street Nominee Trust.** Boulé seconded the motion and it carried 6-0.

Freedman moved to **close the Public Hearing for the Common Driveway on the Special Permit applications for Apple Grove and Hobblebush Lanes.** Stuart seconded the motion and it carried 6-0 (5 of whom are eligible to vote based on requirements for continuous attendance during the hearing).

**Request for review of the Comprehensive Permit Application for “Carlisle Woods,” adjacent to 926 Maple Street at the Billerica town line, application of Massapoag Real Estate Development Corporation (at the request of the Zoning Board of Appeals)**

Carlisle residents **Ed Rolfe** of 916 Maple Street, **Jeannine Geneczko** of 898 Maple Street, and **George Vendura** also of 898 Maple Street were present.

This petition involves a proposed eight-unit 40B housing development on Carlisle Street, near Estey Road and Maple Street (called Treble Cove Road in Billerica) on the Billerica/Carlisle border. Carlisle Street is currently an unpaved road that falls mainly within the borders of Billerica, while the rest of the land proposed for development falls within the town borders of Carlisle. The original plans were dismissed by the Carlisle Board of Appeals on August 5, 2004 due to insufficient information, part of which was the question of the exact location of the Carlisle/Billerica border. In September 2004, the Carlisle BOA determined that the proposed development, in fact, crosses the border into Billerica. On September 9, 2004 MassHousing informed the developer that they must apply for approval from both towns. The developer then petitioned the State Housing Appeals Committee (HAC). On October 13, 2004 the petition was remanded back to the Carlisle BOA with a 90-day (January 13, 2005) deadline for action. The Billerica BOA was not given any specified deadline.

A further complication: Massapoag developers had not filed the notice properly to the Billerica residents, so Billerica’s public hearing has been delayed for another thirty days. Also, their schedule is not tied to a legal agreement, so the timeline that the developers had proposed does not apply to Billerica. This presents problems with the Carlisle BOA in coordinating with Billerica, or in having a joint hearing to find solutions to the concerns stated at these meetings.

At the Board of Appeals meetings attended by Bahr and Hara, the Fire Department submitted comments as follows: that the name should not contain the name “Carlisle,” that all access to the site be within the Town, that there be adequate water supply (30,000 gallon cistern within 100 feet of Maple Street), and that if there is not continuous road connecting

into Billerica, that the cul-de-sac have a fifty-foot inside radius. The request concerning road access to the proposed subdivision is one that Massapoag Development is unlikely to satisfy. The concern about water supply was explained as regarding unanswered questions of which town would respond in the event of a fire in that area, and how. One pertinent fact is that the Billerica Fire Department is located only a half-mile from the proposed new development. Also, there are two fire hydrants nearby, one on Estey Road, but that the Billerica Fire Department has asked to have access to these fire hydrants cut off. Even if there were access, there is a question of whether Billerica's fire hydrants operate the same way as Carlisle's and whether the Carlisle Fire Department could train on how to use Billerica's fire hydrants, or whether, in the event of an emergency, the Billerica Fire Department would be called to assist. The PA noted that the cistern is a regulation, but the other concerns are not; and that, in any case, this development falls under 40B, and is therefore exempt from the usual regulations.

Other concerns discussed by the PB and residents at this PB meeting were as follows: paving of Carlisle Road; whether there is enough space for safe school bus stops and walking space for school children on Maple Street and Treble Cove Road; whether the developer has easements or not, and if not, then who should challenge that (the developer claims to have easements for the cistern, paving the road, and creating school bus stops; the BOA has stated that it is up to the abutters to challenge that claim); drainage issues from Carlisle Road onto Maple Street/Treble Cove Road (the proposed gravel infiltration trenches along Carlisle Road need an engineering review before they can be considered feasible); elevation issues; site line issues; snow removal issues; and parking.

**Ed Rolfe** explained the history of Carlisle Street as follows: according to a letter from Roger Bull to then Town Counsel dated September 29, 1975, the road was originally built in the late 1960s by a resident of the area without proper surveying or planning; Bull's property, (referred to as "Sally Bull's old place") was previously owned by someone named Woodbury and originally had access across Lot 5A, owned by Graham Wright; following a disagreement with Wright, Woodbury created a new access road to his property, and the new road became what is now Carlisle Street; telephone poles that lead to Sally Bull's old place are clearly visible through Graham Wright's property, indicating the location of the former driveway; at the time when Carlisle Street was still a game trail, Graham Wright subdivided his land and sold 2 acres to someone named Higgins. **George Vendura** added that when Higgins bought the property, the Planning Board at that time denied access from the game trail, insisting on access from Maple Street, a decision that Massapoag developers now seem to be overturning.

The PA noted that without 40B, this developer would have had to get full approval from both Planning Boards (Carlisle and Billerica). For example, Carlisle Bylaw 3.2.1.10 specifies that land cannot be accessed on a road without that road being approved by the Planning Board. Massapoag developers have requested (as required by 40B procedure) a waiver of this bylaw, as well as twelve other Carlisle bylaws.

**Jeannine Geneczko** of 898 Maple Street commented that it is exactly those bylaws that would provide for safe school bus stops that the developers have requested a waiver of.

In looking at the information in the slides previously provided by Zinicola that summarize the HAC appeals cases, Hara noted that the HAC only seems to uphold conditions recommended by towns when the issue is safety and emergency access issues. Other conditions are denied.

The Board discussed the dilemma of this application: that residents feel it would be unfair to build homes in Carlisle that are accessed only through Billerica, where they have no representation in town government; and that the most the PB can do to help the BOA with this decision is to propose conditions regarding access issues (i.e. Carlisle Street), which is technically out of Carlisle's jurisdiction.

The site walk is December 5<sup>th</sup> at 2:00p.m., and the BOA public hearing is on December 9<sup>th</sup>.

The Board identified the following preliminary issues to bring up with the BOA that should be referred to the review engineer. The PB will provide finalized conditions after the PB meeting on December 13.

The applicant should be required to:

1. Provide detailed drainage calculations so as not to exacerbate an already overloaded drainage situation. Inadequate drainage in summer becomes an issue of road ice in winter.

2. Have landscape plans that show appropriate buffering for the house at 926 Maple Street.
3. Demonstrate that no water will flow off the site as a result of this construction.
4. Find a resolution to the concerns of the Fire Chief, as well as other issues of access and safety.
5. Demonstrate the ability to improve site distances without cutting down trees, especially in regards to children waiting at a school bus stop on Maple Street at the end of Carlisle Street.

Rolfe urged Members to attend the site walk on December 5<sup>th</sup> and offered his property for parking.

At 10:45, Stuart moved to **end the PB meeting at 11:30**. Freedman amended the motion to **end the meeting at 11:45**. Boulé seconded, and the motion passed 4-0-1 (one abstention).

11:17 Tom Lane left.

### **Scenic Roads**

The PB will not be able to address rules and regulations changes that the Selectmen have asked for, pending a meeting with the Town Administrator to clarify the request.

### **ANR plan for Tophet Road, Carleton Road and East Riding Drive, Map 23, Parcels 22, 23, 31, and 32, James P. Byrne, applicant**

The PA outlined the plan. The outer property line hasn't changed, but the lot lines have been changed to make a total of three buildable lots where there used to be one buildable and two unbuildable lots (adding two new buildable lots to the total number of buildable lots in Carlisle).

Freedman moved to **endorse as Approval Not Required the Plan of Land in Carlisle, MA for the subdivision of lots 39, 40, 54, 55 & 56 into new lots 79, 80 & 81 as shown on the plan dated June 24, 2004 revised September 22, 2004 by Stamsky & McNary, Inc. for J.B. Realty Trust**. Boulé seconded, and the motion carried 5-0.

### **GIS**

The PA reported on the meeting with Town department heads, attended by the heads of the Conservation Commission, Board of Health, Building Department, Assessors Office, and Schools, Fire, and Police Departments. He explained to the Town Administrator and department heads that through the Community Development Plan process under EO418, the PB was introduced to Applied Geographics, who gave the PB a very favorable bid for doing a parcel digitization for the parcel base layer needed for any GIS system. He further explained that as things are now, the Town repeatedly pays for GIS-based plans on paper, citing the Wireless Plan and OS&R Plan, which could be done much cheaper if the Town had GIS capability. The Town Administrator had then asked all other department heads how they would use a GIS system, and they all had particular needs that they thought GIS could fulfill. For example, the Fire Department is currently working on a project in which they identify every structure in Town, go to the site, physically measure their distances from a water source (by hand), and enter that information in a database, whereas GIS has a measuring tool that could save them a lot of time, effort, and expense.

Regarding the financial side of GIS, the PA had anticipated a discussion of the supposed \$20,000 spent on GIS so far. For that reason, he had handed out the project's financial information, showing that the PB has spent about \$17,000 over the course of three fiscal years out of normal operating budgets (through their Planning & Engineering line items). As it turned out, however, this issue was not discussed at this meeting with department heads. From that meeting, the PA concluded that there is a need for GIS, that a lot of departments can use it, and that the Town should move ahead with a planning process, in which a small group (identified by the Selectmen) would formulate a larger, overall plan for technology used in the Town that would include GIS.

### **Pictometry**

The MAPC distributed the drive to run Pictometry at no cost at their information and training session, which the Board of Health Agent attended. All Town bodies could have access to Pictometry if the drive were installed on the Town server.

### **Executive Session to discuss litigation regarding Berry Corner Lane**

Freedman **moved to go into executive session to discuss a letter from our attorney about ongoing litigation regarding Berry Corner Lane, not to return to regular session.** Boulé seconded the motion. The PB members voted as follows: Gonzales – Aye; Boulé – Aye; Stuart – Aye; Hara – Aye; Freedman – Aye.

Freedman **moved to end executive session and end the meeting.** Stuart seconded and the motion carried as follows: Gonzales – Aye; Boulé – Aye; Stuart – Aye; Hara – Aye; Freedman – Aye.

At 11:45 p.m., the Board adjourned the meeting.

Respectfully submitted,

Helen Boos  
Administrative Assistant