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Town of Carlisle

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Office of
PLANNING BOARD

Minutes

9/26/05

Minutes 9/12/05

Bills

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Bakewell, applicants**

ANR Plan: 231 Bingham Road, Map 7, Parcel 59, Bingham Road LLC, applicant

**Request for release of lot 2A from Great Brook Estates Definitive Subdivision Plan (request of
Ira Gould)**

Fire Protection

Computer

David Freedman called the meeting to order at 7:32 pm in the Clark Room at Town Hall. Board members **Louise Hara, Michael Epstein, Rich Boulé, Ray Bahr**, and Planning Administrator, **George Mansfield**, were present. Board Member Kent Gonzales was absent. **Peter Stuart** joined the meeting at 7:37 pm. Associate member **Brian Larson** was present.

Gretchen Caywood, assistant to the Planning Administrator, Kevin Balboni, 97 Buttrick Lane, Ivana Gentile, 93 Buttrick Lane, Ann Jackson Hill, 81 Buttrick Lane, Kate Sweeney, 63 Buttrick Lane, Scott McIlhenney, 70 Buttrick Lane, Martha Blue, 29 Buttrick Lane, Jean Morin, 9 Timothy Lane, Ira Gould, 1230 Westford Street, and Bob Zielinski, Carlisle Mosquito reporter, were also present.

Notices

Mansfield circulated a notice of the upcoming Annual Meeting of the Massachusetts Federation of Planning and Appeals Boards, and mentioned that if any of the PB was interested in attending they should see him outside of tonight's meeting. Also, he mentioned the notice of a BOA hearing on Thursday, October 6th, that will address

Coventry Woods. The hearing will be continued beyond that meeting, and the application documents will then be circulated to the other boards. Therefore, it is not necessary for PB members to attend. Also Mansfield reported that he expected Ira Gould to arrive tonight to discuss events in the Great Brook Estates development, although this was not on the agenda.

Minutes

The PB reviewed the minutes of the 9/12/05 meeting, and Freedman, Epstein and Boulé suggested a few changes. Hara moved to accept the minutes as amended, Boulé seconded and the motion carried 5-0-1, with Peter Stuart abstaining.

Fall Meeting Schedule

Freedman introduced the fall meeting schedule proposed by Mansfield, who suggested meeting on October 24th (with no meeting on October 10th due to the Columbus Day holiday), November 14th, November 28th, and on December 12th. Mansfield noted that for the meeting of November 28th, the pre-meeting packet will need to be sent out to the PB by the Wednesday before Thanksgiving. Freedman polled the PB to ascertain if all were in agreement to this schedule, and agreement was confirmed.

Flood Insurance Rate Maps (FIRM) Update

Mansfield mentioned that both he and Sylvia Willard had received invitations to attend a FEMA scoping session on Wednesday, September 28, as Carlisle representatives in preparation of updating FIRM flood hazard maps. When Freedman asked if there is any reason for attending, Mansfield expressed that he thought it worthwhile for he and Willard to attend, as together they may be able to provide some helpful input on potential changing flooding issues in Carlisle.

Budget

Mansfield stated that there is no new budget information to review at this time, as there has not been an opportunity to train the new assistant Caywood on the use of the database. He pointed out that there will be such an opportunity before the next meeting.

Citizen Planner Training Collaborative

Freedman commented on Mansfield's suggestion that the workshop entitled "Roles and Responsibilities of Planning and Appeals Boards" may be of interest to Caywood if she is interested. Caywood stated that she would be interested in attending the workshop (on October 19th), and Freedman put the matter before the PB. The PB approved Caywood's attendance 6-0. Freedman also pointed out that, as a new associate member, Larson may wish to review the workshop offerings to see if any are of interest to him.

Special Permit for Reapproval of Accessory Apartment at 9 Timothy Lane

Since the Zoning Bylaw requires an accessory apartment special permit to terminate upon sale of a property, the new owner, Jean Morin, has reapplied for the special permit. If the PB finds that the condition of the apartment remains substantially unchanged (from the time of the original application), it may grant the re-approved permit without a public hearing.

Epstein asked the requirements and purpose of apartments for which special permits can be obtained. Mansfield noted the 5 purposes as being 1) to financially or physically assist the homeowner in remaining in the home, 2) to make housing available to low and middle income families, 3) to provide a variety of housing in the town, 4) to protect property value stability and the single family character of a neighborhood, and 5) to legalize conversions and to encourage the monitoring of property conversions. Stuart pointed out that the bylaw as written discourages someone from putting in an accessory apartment. When Bahr suggested that the PB should look at changing the bylaw, Freedman mentioned that they will be addressing this matter with the BOS.

Freedman asked if the tenants are allowed to stay without the issue of a new permit. Mansfield confirmed this, but added that when these tenants move out, a new permit is required. In light of current affordable housing discussions, Freedman asked if the tenants are of limited income and pointed out that there is a move to deed-restrict accessory apartments as affordable housing. Morin stated that it was not likely that the tenant is of limited income. Mansfield pointed out that low to moderate income for this purpose is considered to be below \$80,000 annually for a family of four. Freedman stated that a deed restriction can be set for a period of time, and asked Morin if she would be willing to consider a deed restriction on the accessory apartment at 9 Timothy Lane if the tenants qualify. Morin agreed.

Jean Morin, co-owner and resident of 9 Timothy Lane, spoke on behalf of her request for waiver of the special permit fee of \$250, stating that there are no changes to the property. Mansfield pointed out that in 2000 when the prior owners purchased the property, they did not request such a waiver. He also pointed out that Morin has paid, and the PB is holding the check. Mansfield clarified that while there is no public hearing requirement in this case, there is still much work on the part of the Town staff, including the drafting of a special permit decision, making findings, filing a motion with the Town Clerk and allowing the 20 day appeal period, and notices of the decision to the abutters.

Freedman pointed out that there are three decisions here: 1) waiving the hearing, 2) waiving the application fee, and 3) reapproving the special permit. Mansfield pointed out that the meeting packet contains the supporting documentation that the condition of the apartment has not changed substantially. At this point, Hara moved to waive the hearing for James and Jean Morin for renewal of the special permit for the accessory apartment at 9 Timothy Lane. Bahr seconded the motion, and the board approved 6-0.

Bahr asked about the work involved to reapprove the permit. Mansfield pointed out that it involved drafting the decision, obtaining an abutters list, and notifying the abutters. Mansfield also pointed out that the review of the draft decision would not be conducted until the October 24th PB meeting, and ascertained that this did not pose a financial concern for Morin. Freedman ascertained that \$250 is the standard fee for the special permit application, and does not change with or without a hearing. Mansfield mentioned that the fee is purposely low to encourage individuals, and that the accessory apartment permit extension (at \$200) is an extension of time, therefore this would be a new accessory apartment special permit application. Hara suggested waiving the fee if for a deed restricted accessory apartment. Bahr pointed out that consistency will be important in deciding on fee waivers. Stuart stated that we should keep the fee, in his opinion.

Stuart introduced a motion to waive the fee for the accessory apartment at 9 Timothy Lane, Hara seconded, and the motion was disapproved 0-6.

Hara then moved to reapprove the special permit at 9 Timothy Lane with findings that the accessory apartment is under maximum size, the condition is unchanged, and that the apartment still fulfills all provisions of an accessory apartment. Epstein seconded the motion and the motion passed 6-0.

Wireless Bylaw Subcommittee

Boulé reminded all about the upcoming subcommittee meeting on Wednesday the 28th at 7:30, and that there was nothing of significance to update prior to this meeting. He also pointed out that there might not be a BOS representative in attendance at the meeting, as Bill Tice will not be able to attend. Freedman planned to email Doug Stevenson (BOS) and John Williams (BOS) to remind them of the meeting and encourage their attendance, as this is a critical meeting with David Maxson of BSR that will define the scope of work going forward.

Request for alteration of approved Common Driveway Special Permits for Buttrick Lane, Concord Street (Request of Kevin Balboni) [Subsequent public hearing may be required]

Kevin Balboni spoke on behalf of the Buttrick Lane residents, stating their interest in combining the two Trusts for two driveways into one overall Trust. The developer is about to release the association to the homeowners, and they would like one trust to manage it, which is why they are speaking with the PB. Mansfield summarized the

situation to the PB: that Buttrick Lane had been approved as two distinct, but linked, common driveways, but is actually a looped driveway with 2 entrances serving 13 homes. It had to be treated as 2 separate driveways to satisfy a Zoning Bylaw requirement that one common driveway serve no more than 7 lots (6 if not in a Conservation Cluster).

Freedman stated that if the attorneys are ok with this, he expected that the PB would be. Epstein pointed out that the two drives were linked here for safety and design purposes, and that in 1999, the two trusts were set up with two associations. Epstein spoke with DeutschWilliams today with regard to a similar situation at Greystone Crossing, and the two trusts and associations can probably be combined, but the documents just need to be amended. Epstein suggested that as long as the common drives were kept separate, that the association and trusts can be combined. However, the PB should get confirmation on this from Town Counsel, and cross easements will likely be needed.

Mansfield pointed out that in 1999 two special permits were granted – one for each common driveway. Epstein added that the PB would need to ascertain if a new public hearing would be required, and reiterated that the PB should seek guidance on document amendment.

Since some legal work will be necessary for this, Boulé ascertained whether this move will be financially beneficial for the neighbors. Balboni stated that with one trust there will only need to be one maintenance document. Boulé pointed out that it is possible to have one maintenance agreement to cover both associations and trusts without going through these changes.

Freedman pointed out that the PB is fine with the setup as is. However, if the changes are made for the neighbors' convenience, but Town Counsel review is required, the PB needs to ascertain how it will be paid for, and if it is of any benefit to the Town. Balboni then asked how this issue is being handled on Cross Street. Freedman discussed that, at the Cross St. location, it appeared that the goal was to have a single maintenance agreement for 3 common driveways, two of which meet.

When Stuart asked about the benefit of common driveways, Epstein pointed out that it provides additional flexibility to the PB, more so than subdivisions. Stuart expressed that he felt any additional expense should be borne by the residents of Buttrick Lane. Mansfield pointed out that the common driveway special permits refer to the two maintenance agreements – one for homes 1-6 and one for homes 7-13.

Resident Scott McIlhenney pointed out that currently, three trustees will be required for each side of the subdivision. The residents want to have one voice to speak for the subdivision. At this point, Freedman stated his opinion that, since this change would mainly benefit the residents, the residents will need to pay for it. Also, he felt that they will need to work with the Town Administrator on the legal aspects of this issue to the extent they may involve Town Counsel.

Epstein advised that another approach would be for the residents to hire their own counsel to modify documents, then have them come to the Town Counsel for review. However, either way, the costs should be borne by the residents of Buttrick Lane. Hara pointed out that there are draft documents in place for Cross Street. When Balboni asked how the residents would find out about the Town Counsel opinion on these documents, Freedman stated that it may come up during the Cross St hearing at the October 24th PB meeting. The residents pointed out that the transfer of ownership is expected to be final in the next two weeks. Epstein indicated that he will be speaking with Town Counsel about the Cross Street documents.

ANR Plan: 231 Bingham Road, Map 7, Parcel 59, Bingham Road LLC, applicant

Mansfield pointed out that this plan is for a parcel north of the Greystone Crossing land. The applicant's goal is to convert one 2.6 acre lot to one 2.0 acre lot with a house and a 0.6 acre lot that is not buildable. Epstein moved to endorse the plan of land drawn for Bingham Road LLC for property at 231 Bingham Road creating two new ANR parcels, 7.59B and 7.59C and dated September 9, 2005 to be endorsed as approval not required. Boulé seconded and the motion passed 6-0.

Affordable Housing

Freedman mentioned that he had received a phone message from DHCD asking for a few minor changes to the plan, then they expected to approve the plan.

All Boards Meeting

Freedman reminded the PB of the All Boards meeting on Thursday the 29th, and reminded that a 5 minute update will be expected from each board. He asked if the PB members felt that any particular statements were in order at this meeting. Bahr stated that we must raise the issue of a technology committee. Freedman relayed that he had told BOS Chair Doug Stevenson that the current computer maintenance system is not working and that we need to have assistance on a more regular basis, and available during business hours, to go over all computer issues in Town Hall. Freedman said that the expense for this should be covered by the BOS as it is a Town Hall wide issue. Freedman has asked Stevenson to follow up on this matter, and made clear its importance. Freedman agreed to bring up the technology issue at the All Boards meeting.

Request for release of Lot 2A from Great Brook Estates definitive subdivision plan (request of Ira Gould)

Freedman pointed out that Gould had most recently exchanged the one lot remaining in the covenant for a previously released lot to secure final completion of the subdivision. He now has an offer to buy this remaining lot (Lot 2a), with no other lots left to be held as security for the completion bond. Gould submitted a letter detailing his suggestion, which is as follows: since the transaction on Lot 1a has not closed, and he has an offer on Lot 2a (the only remaining lot), he proposes returning the release of Lot 1a so the Town will have a lot as security. Then Town Counsel can review a performance bond agreement. When it is deemed acceptable, the PB can release Lot 2a, which Gould will sell to fund the escrow account. Lot 1a can then be re-released to Gould. Gould then circulated his draft proposed Performance Bond Agreement to the Board.

Freedman verified that Ira does wish to do a cash escrow account of approximately \$100,000. Hara confirmed with Gould that all issues with ConsComm had been addressed and asked for a letter verifying this. Gould said that only one ConsComm issue remained – a drainage system modification and repair which is included in the cost-to-complete memo. Gould stated that they will need to put a culvert underneath the driveway to Lot D, and will do that coincident with final paving for only one disturbance of paving. Gould stated that he is not aware of any other issue that has not been addressed to ConsComm's satisfaction. Also, the only outstanding work Gould is aware of is the final paving of the subdivision roadway, and the final paving cannot take place until the construction of the last 2 houses in the subdivision is completed. This includes berms that direct runoff, which was part of the surface flow and water mitigation plan approved by ConsComm. Therefore, ConsComm cannot issue a cert of compliance until the driveway is paved and the construction completed.

Mansfield stated that an example of a prior tri-party agreement was used as a guideline. Also, there is a project review fee account, the value of which Gould recalled as about \$10,000. Gould indicated he will add funds to cover a few hours of counsel time for document modification if necessary, and that the amount in the Cost to Complete letter includes a 20% contingency fee for costs in excess of the estimates. Epstein suggested that the PB have Sleger confirm that the list of items to be completed (from July) is still the same and that the cost estimates still hold.

Freedman then confirmed Gould was requesting that the PB to sign the release for Lot 2a, and hold the releases for Lots 1a and 2a until Town Counsel approved the form of the performance bond agreement. Upon approval of the agreement, the PB could allow the release of Lot 2a and thereafter re-release Lot 1a once the escrow account has been funded from the sale of Lot 2a. Gould suggested that the release for Lot 2a could be signed and left with the Administrator. He also added that if the PB adopts his suggestion, he is likely to get things completed much before the next PB meeting on October 24. Using this approach, when all is satisfied, if it is before 10/24, the lot may be able to be released before that date.

Epstein ascertained that the performance bond agreement is the entire escrow agreement, and that agreement does not set forth obligations of the escrow agent (an attorney retained by Gould). Epstein pointed out that typically escrow agreements have a listing of rights and parties to whom the funds are supposed to go so that if the escrow agent does not execute their duties, the Town has recourse. This is termed the "rights and remedies of stakeholders" and this should be documented.

Mansfield informed the group that the three means of securing performance are: 1) the covenant for which the value is in the lots, 2) a cash account deposited by the applicant and held by the Town, and 3) a tri-party agreement usually involving a lending institution. In this case, the attorney would be holding the escrow account instead of a lending institution.

On reviewing the situation, Epstein felt that this arrangement is suitable overall, but that some more provision should be put in place (by Town Counsel) in the performance bond with respect to Town rights, and under what circumstance the escrow agent can release the money. Freedman reiterated that approval will be based on Town Counsel's ok, and that Lot 1a financially covers the situation 5-times over. Also, procedurally, the PB will hold both lots until Town Counsel approval of this arrangement.

The Board agreed that, while they do have the option to take no action on this at this time, and defer to Town Counsel, it seems appropriate to proceed in the interest of striking a balance between protecting the town and being facile and accommodating to a developer who, Epstein confirmed, has in his experience been agreeable in his dealings with the Board. All realized that it benefits residents to advance this work by possibly shortening construction time, truck traffic in and out of the area, etc.

Epstein moved that the PB accept the return of the lot release for Lot 1a and instruct Mansfield to compile all other originals of that lot release with other original documents pertaining, that the PB request the review of the performance bond agreement (and escrow agent portion) by Town Counsel, that we consult with the Town Engineer to review the 7/18/05 David E. Ross estimate of outstanding items, and inform the PB whether this number or a modified number should be inserted as the "hold back" amount in the performance bond, that we agree to release Lot 2a to Mr. Gould subject to the aforementioned, and subject to the receipt of a signed performance bond by all parties, that we agree to release Lot 1a upon the funding of the "hold back" amount into escrow as set forth in the performance bond, all subject to Mr. Gould paying any fees necessary for this review and making up any deficiency in the project review account to cover such costs. Boulé seconded the motion, and it passed 6-0.

ANR Plan: 290 Rutland Street, Map 25 Parcel 1B and Map 36 Parcel 24D, John and Lauren Bakewell, applicants

Mansfield explained that the reason for this request to combine two lots is that the taxes for the combined building lot will be less than those for the current two building lots. Bahr moved to endorse the plan of land at 290 Rutland Street drawn by John A. Hammer for John and Lauren Bakewell dated September 6, 2005 combining lots 1 and 2 into a single lot as approval not required. Hara seconded the motion.

Mansfield pointed out that with the combined 10.6 acres it would be possible to create a conservation cluster. Freedman ascertained from Mansfield that the combination of lots will not affect the common drive serving this property, as Mansfield explained to the group that the common drive agreement goes with the land.

When voted, the motion carried 6-0.

Affordable Housing Plan

Freedman brought up the inclusionary zoning document he had circulated and questioned whether this concept will work in Carlisle. He suggested perhaps having an outside consultant evaluate this issue further, but wondered whether it was worth spending the funds. Freedman also pointed out that our affordable housing consultant thinks inclusionary zoning is worth pursuing.

Freedman requested that 1 hour be set aside on the next PB meeting agenda (October 24th) for discussion of implementation of the Affordable Housing Plan, and stressed that all PB members should review the appropriate documentation before the meeting.

Electronic Submission of Plans

Freedman asked Mansfield to check if other towns require electronic submission of plans and “as built” submissions.

Fire Protection

Freedman reported that he had received a note from Deputy Fire Chief White expressing that in the future all cul-de-sacs should be designed with a 30-foot interior radius., and reminded the PB that subdivisions require a 50-foot radius in the cul-de-sac design. Currently, the common drive regulations state that a minimum of a 25-foot radius and a 12-foot pavement width are required. He asked the Board to consider if they need to review these regulations. Epstein ascertained from Mansfield that the last review of the common driveway rules and regulations was in 1995.

Bahr reported that he, along with several others, met with Fire Chief Flannery to discuss the cisterns in Carlisle. With proper cistern coverage, the goal is to reduce Carlisle’s insurance rating (thereby lowering costs). Boulé ascertained from Bahr that a one-step reduction could reduce property taxes per household by a few hundred dollars annually.

Bahr reported that the Fire Chief had hand-drawn maps of where he would optimally like cisterns located, and showed data and recommendations from 3 different boards. He also indicated that the chief believed all cisterns but 2 need to be upgraded to 30,000 gallon capacity. Freedman mentioned that any plan is likely to be proposed as a bonding issue.

Boulé suggested that the PB should review the rules and regulations of other rural towns in the area.

Freedman and Epstein stated that the PB should accept the Fire Department’s offer of riding on the fire truck to experience first-hand potential issues with existing roadways. Epstein inquired as to whether the building inspector could refuse to issue a Certificate of Occupancy if the cul-de-sac is constructed with the 25-foot radius. Freedman responded that he believed the fire department can deem the construction unsuitable for any reason. Epstein then pointed out that the Town could potentially be sued if this were to happen.

Bahr stated that he felt the BOS should be approached about the overall issue, and that we should not proceed on a case-by-case basis in the future. Bahr also reported that he suggested to the Chief that a fire protection layer be added to the GIS. Freedman offered to contact Deputy White to set up a fire truck run, in which Stuart, Boulé, and Hara expressed interest in participating.

Stuart moved to adjourn the PB meeting, Bahr seconded, and the meeting was adjourned at 10:50 pm.

Respectfully submitted,

Gretchen Caywood
Administrative Assistant