

PLANNING BOARD MINUTES
MEETING OF JANUARY 2, 2008

A meeting of the Lexington Planning Board in Cary Auditorium, Cary Hall was called to order at 7:35 p.m. by Chairman Hornig with members Zurlo, Canale, Galaitsis, Manz, Mr. Carl Valente, Town Manager, and planning staff McCall-Taylor, Henry and Kaufman present.

The following Selectmen were present: Chairman Krieger, Mr. Kelley, Mr. Cohen, Mr. Manz, and Mr. Burnell.

The following Zoning Board of Appeals members were present Mr. Barnett, Vice Chair, Ms. Uhrig and Ms. Wilson.

**** JOINT MEETING WITH BOARD OF SELECTMEN AND ZONING BOARD OF APPEALS****

Presentation on Nonconforming Buildings and Lots:

Mr. Carl Valente introduced Garry Rhodes, Building Commissioner, David George, Zoning Administrator, Maryann McCall-Taylor, Planning Director, and George Hall, Attorney with Anderson & Kreiger, Town Counsel.

The purpose of the meeting was for the three Boards to discuss a proposed change in the interpretation of the non-conforming use sections in the Zoning Bylaw. The Building Commissioner had noted that recent case law indicated that grandfathered non-conforming lots could lose that status once an existing house on the lot is torn down.

Despite ambiguities in the wording of our bylaw, Mr. Hall believes that the Town's long-standing policy of approving permits for demolition and rebuilding on non-conforming lots can be legally supported. He noted that the statewide trend is the other way.

Mr. Canale feels this is a good incentive to look at current bylaws, get feed back and look into the future to address state and local laws and how they are working for the town.

The joint meeting ended at 7:50 p.m.; the Planning Board recessed for 10 minutes. At 8:00 p.m., the Planning Board meeting was reconvened in the Selectmen's Meeting Room, Town Office Building.

***** MINUTES *****

Review of Minutes: The Board reviewed the minutes for the meeting of December 12, 2007. On a motion duly made and seconded, it was voted, 3-0-2 (Ms. Manz and Mr. Canale abstained), to approve the minutes.

The Board reviewed the minutes for the meeting of December 17, 2007. On a motion duly made and seconded, it was voted, 3-0-2 (Mr. Galaitis and Mr. Canale abstained), to approve the minutes.

The Board reviewed and corrected the minutes for the meeting of December 19, 2007. On a motion duly made and seconded, it was voted, 5-0, to approve the minutes as amended.

***** TOWN MEETING*****

Special Permit Residential Developments: Ms. McCall-Taylor said Kevin Batt, Town Counsel, is currently reviewing Article IX and there maybe some changes regarding ANRs. Mr. Batt will get back with any revisions and then the Board can further review the Article.

Mr. Hornig suggested moving the public information meeting from January 16 to January 23 and to hold it in Cary Auditorium if it is available. Mr. Hornig stated that Article IX needed to be posted on the planning web page and a letter sent to the Lexington Minuteman to notify the community.

The public hearing schedule will be as follows:

- January 30, 2008:Rezoning Countryside; Amend Zoning Bylaws on Height of Buildings and Planning Board Associate Member;
- February 6, 2008: Eight Citizens Articles relating to Amending Zoning Bylaws for Commercial Districts; and
- February 13, 2008: Amend Zoning Bylaw on Special Permit Residential Development.

***** STAFF REPORTS*****

Ms. McCall-Taylor said she and Mr. Henry would be attending a LEEDS neighborhood program on January 11, 2008.

Mr. Henry said that a few street improvement submissions would be coming in shortly.

***** BOARD REPORTS*****

Mr. Canale said he attended a TMG meeting last month and the Hartwell striping plan was discussed. The Commander of the Air Force Base said there were long queues at the base. At this point the striping trial will continue.

Mr. Canale said there will be a meeting on January 10, 2008 to discuss the MORE funds applied for by the Town for traffic improvements in the Shire area. There will be preliminary plans for sidewalks on Hayden and Spring Street. On January 16, 2008, there will be a West Lexington Greenway Meeting at 7:00 p.m. in the Cary Memorial Library with plans available for viewing at 6:30.

Mr. Zurlo expressed concern about the long queues from the bicycle striping. Ms. Manz said this issue was raised at the Chamber of Commerce meeting. She suggested that there might be possible mitigations that could be undertaken by the base, such as more gate personnel attention at the entry, or opening another exit at the Air Force Base.

Mr. Hornig recessed the meeting at 8:45 p.m. for 15 minutes before starting the deliberations on 960-990 Waltham Street.

*****SUBDIVISION ADMINISTRATION*****

Deliberation on 960-990 Waltham Street, Definitive Special Residential Subdivision:

The Planning Board received a letter from Mr. Friedlich and seven form letters in opposition to the plan, all to be made part of the record.

Mr. Hornig took a straw poll to see who could support the plan with any set of conditions. Mr. Hornig said he could support the plan, Mr. Zurlo said he couldn't answer that question as posed, he would need some discussion first, Mr. Canale agreed. Ms. Manz said yes she could support the plan with the right set of conditions and Mr. Galatsis said yes, with the right set of conditions.

Mr. Canale said at the last meeting there some discussion of potential changes and asked is any had been submitted. Mr. Hornig said the applicant would submit revised plans once they had a plan approved with set conditions. The Conservation Commission has not finished its hearing yet.

Mr. Zurlo wanted to discuss the interpretation of height in units one through five. Ms. McCall-Taylor said that she had discussed the height with the new Building Commissioner. He had found it the height to be within the maximum using the zoning bylaw definition. Mr. Zurlo had concerns with the building heights

and maximum impacts being in conformance with our requirements. Mr. Hornig said the height and impacts do not exceed the maximums although the Board is not required to permit to the maximums. Mr. Zurlo said the issue is if this development is an appropriate presence on Waltham Street.

Reading from a prepared statement, Mr. Galaitis explained his position by citing passages from the Planning Board Report to the 1996 Town Meeting, the Zoning By-Law, and the 1998 Planning Board Guidelines for cluster developments, which describe the expected Cluster incentives to a developer and the expected benefits to the town. In his view, developer incentives include: a greater number of units than allowed by right in a conventional subdivision, relaxation of setbacks between cluster units, and others. Benefits to Town include: cluster impacts not greater than those of a conventional development on same site, at least 2/3 of units being for small households, positive revenue/cost impact ratio for Town finances, and others.

Mr. Galaitis stated that the 960-990 Waltham St. cluster proposal exploits the above incentives but runs counter the above three desired benefits. Specifically, he stated that: A) The proposed plan will cause 55% more development impacts than a conventional subdivision on the same site because it has a 6.36 multiplier for living area instead of a multiplier close to 4 based on the proof plan shown for the same site. B) The Planning Board's Cluster Guidelines specify that at least 2/3 of the units will be for small households (with 1 or 2 bedrooms), while the proposed plan contains less than 1/3 small household units; furthermore, all units have large living areas (2,211 to 2,375 sq. ft.) instead of the smaller living areas (1,425-1,530 sq. ft. for 13 units) that would yield comparable impacts. C) Because of their large size the proposed units will most likely be occupied by full-size families, with each unit incurring about the same schooling cost as a conventional dwelling unit. Therefore, the proposed 13-unit cluster will have about 3 times (~13/4) more negative revenue/cost ratio than a 4-dwelling conventional subdivision on the same site. While the Planning Board is not responsible for solving Lexington's fiscal problems, it should factor them in when reviewing proposals with a greater number of full-size-family units than allowed by right.

In Mr. Galaitis' opinion, the above and other negative impacts (such as appearance of 4-story buildings, etc.) wipe out the potential benefits the town could have realized from a reasonably-sized cluster development on this site. Therefore, given that Section 135-48-C(3) stipulates that "...an applicant is not entitled to... approval of a cluster subdivision...", he felt obligated to vote against the proposed plan for 960-990 Waltham Street.

Mr. Hornig asked the Board for their position statements. Ms. Manz said that the applicant came in within

the maximums and worked with the Board over a series of meetings and ultimately submitted this definitive plan. She felt the Board had an obligation to make a decision and had to deal with the equities. The applicant followed the rules and responded to the requests of the Board. They came and abided by the Board's rules and condition, and in fairness, they provided a variety in housing. The town doesn't get a lot of townhouses and the additional traffic from 13 homes won't have a substantial impact. The alternative would be four very large homes. Other issues of concern to her are adequate drainage; sidewalks being ADA compatible; limited curb cuts; lower profile on one block preferred; and walking paths and changes.

Mr. Canale asked for clarification about the affordable units. Mr. Henry said there is one two-bedroom unit affordable at 80% AMI and they are providing a LIP application. Units one through four are two-bedroom units and the remaining nine are three-bedroom units. Mr. Canale wanted the condition of approval to specify that the units be specified so they would be eligible to be counted on the subsidized housing inventory. Mr. Canale was not so sure that the applicant responded to the Board's requests for modifications for changes through out the process. The scale and height of the development is still more than it should be. The affordable unit is a plus. Other concerns are the easement for access to paths to Brookhaven, Ricci Lane monumentation and sidewalks being not only walkable, but also useable with wheelchairs.

Mr. Zurlo asked for clarification on the height interpretation. Was the height based on lot corners or building corner? Units one through five are of particular concern. Ms. McCall-Taylor said they used lot corners and building corners for different conditions as allowed by the bylaw. Mr. Zurlo's concerns were ensuring 50 percent of the cellar was below the finished grade on the entry level and lowering at least part of the dwelling containing units 1-5. He felt unit five should be lowered by some degree. He suggested lowering the unit four feet and dropping the garage, even though this would require cut in the rear. This will help with the transition from units six to nine and he is comfortable with the additional cut. Mr. Canale said this sounds reasonable.

Mr. Galaitis asked if the affordable unit is for sale by the developer or a gift to the Town? Mr. LeClair said the selling price is set by the State. It is not a gift to the Town it is a homeownership unit. Mr. Zurlo said he was concerned with the curb cuts in and out. He wants the left entrance the only access in and two exits. He also wants the move the two-way entrance 15 feet further from the abutter.

Mr. Hornig wanted input from the Board on whether or not to remove the old foundations in the middle

of the property. Ms. Manz said they should be removed if it is a matter of safety. Mr. Zurlo said to remove them and if there are any issues we will revisit it. Mr. Canale said if there is anything commemorative of past use, they should remain, if not they should be removed. If they are to be removed, the Limit of Work needs to be modified.

Mr. Hornig outlined possible conditions of approval as follows: expanding the drive to 18 feet to unit 13; designing the large detention basin to drain within 48 hours; affordable unit; update plans to show outlets, electrical connections and the sewer easement; modify access easement to branch at the pump station, iron pins to be used at every corner of the boundary and an interpretive sign at the beginning of the path; woodchips on the path; usual covenants, drainage, grant of easements and landscape plan to be filed; lower level must be 50% below average grade; unit five ridgeline will be lowered four feet (will need to reconsider dormer size since it will exceed 50% of that ridgeline when it drops); make the southern access one way out; northern access moved 15 feet from property line; make sure sidewalks are ADA compliant after changes.

Mr. Hornig asked if there were any objections to the conditions. He has a concern about major plan changes. Mr. Zurlo said that these are not significant changes since the applicant said it is not impossible to shift the drive and many retaining walls are already required. The items that were considered for this project were the design of the neighborhood and how it fit into the area, since it is the gateway to Lexington, and the height modification is okay, although not worked out in great detail.

Mr. Canale said the four feet height change is a make-it or break-it for him, and the moving of the drive five feet would have been adequate but ten feet is okay.

On a motion duly made and seconded, it was voted, 4-1, (Mr. Galaisis opposed) to approve the special permit for the special residential subdivision at 960-990 Waltham Street with the conditions discussed.

On a motion duly made and seconded, it was voted, 4-1, (Mr. Galaisis opposed) to approve the definitive subdivision plan with the appropriate conditions and standards.

On a motion duly made and seconded, it was voted to adjourn the meeting at 10:40 p.m.

Wendy Manz, Clerk