

ACTON PLANNING BOARD MEETING
JUNE 3, 2010

A. **ROLL CALL** – 7:00

Members present were: Chip Venell- Chairman
Thomas Cashin – Vice Chairman
Yoli Gallagher
David Jones
Arthur Kelly – 2nd Alternate (Voting in place of Mr. Davis)

Members absent were: Keith Davis

Jessica Donnell – 1st Alternate

Also present were: Kenneth Paul, Code Enforcement Officer; Debi Rix; Richard Neal; James Crowley; Steve Foglio representing the Andersons; Sandra Jones, applicant; Frances LaPierre representing Ms Jones; and Charles and Tammy Tranchemontatre

B. **MINUTES**

May 20, 2010 - A Motion was made and seconded to approve the Minutes of the May 20, 2010 Meeting as submitted. Jones/Kelly – Unanimous.

C. **PUBLIC HEARINGS**

1. **Deana and David Anderson – 1141 Lebanon Road – M262/L4 – After-the-Fact Conditional**

Use Permit for a Two-Family Dwelling – Steve Foglio explained he is from Real Estate 2000 and would be representing the Andersons in this matter. He advised that the Andersons paid for an addition to an existing dwelling for Mrs. Anderson’s parents. He said the reason he is before the Board is to legalize the request for an After-the-Fact Conditional Use Permit for the addition.

To Mr. Cashin’s request that he give a brief history of the conditions of the site in the area of the structures, Mr. Foglio advised the principal structure is an 1800 farmhouse with an attached “L” that also has an attached building on ten acres of land.

Mr. Venell referenced the plan in the file containing the lot dimensions and explained because it is a two-family dwelling, it requires a Conditional Use Permit. He stated without the knowledge of the property owners, the contractor neglected to obtain the proper permits for the construction even though he told the property owners that he would do so and was paid for them.

Mr. Foglio advised the work was done four or five years ago, but the property owners didn’t find out what occurred until the property was put on the market for sale. He mentioned there is a new septic system design which will handle the two dwellings. He stated no one resides in the second dwelling.

To Mr. Paul’s comment that approximately 22’ of the road frontage for this property is located in Sanford, Mr. Venell mentioned there is sufficient frontage for the second dwelling in Acton.

Mr. Paul explained when the work began, there was no Conditional Use Permit requirement, but since then the Zoning Ordinance has been revised and one is required.

After ascertaining that there were no further questions or comments, Mr. Venell closed the public hearing at 7:11 PM.

2. **Sandra Jones – Minor Subdivision on Milton Mills Road** – Mr. Venell explained to those

present that Ms Jones has taken the property by a Deed-in-Lieu-of-Foreclosure because the developer defaulted on a loan she gave him for the project. He said one dwelling was built and she has a buyer who is waiting to move in.

Frances LaPierre explained she is the surveyor on the project and will be representing Ms Jones for this project. She mentioned the Board conducted a site walk on May 22, 2010 and at time some concerns were expressed. She referenced a letter contained in the file which addresses some of those concerns. She said she is aware that the wetlands on the site are to be left undisturbed. She pointed out the adjustment on the southwest corner of the property. She mentioned the boundary between lots one and two has been adjusted to give additional space for the septic system. She advised there is an easement on Lot #2 for the benefit of Lot #1. She stated the soils engineer requested a 100' setback from the school's drinking water well as it is a public water supply. She informed that the dwellings will have sprinkler systems. She pointed out that Note #12 addresses some of the concerns expressed during the site walk. She said Note #13 was added as well as the building envelopes for Lots #2 and #3 being indicated on the plan along with the wetlands.

To Debi Rix's, an abutter, question concerning whether the boundary of Lot #1 goes into Hebo Hibo Road correct, Mr. Venell said it appears to go down the center of the road.

Ms Rix explained that she has a lot on that road and is concerned about public easements. She asked whether that lot is being reviewed at this time by MMA and the Board of Selectmen. She felt that would have a bearing on that lot if it is going to be approved as that will take away her part of Hebo Hibo Road. She said that issue should be resolved prior to the Board's approval of the plan. She stated if the Board approves the plan and later finds out that road was discontinued illegally, the Board may have to review the plan again with a public easement.

Ms LaPierre explained the lot has been designed so that the frontage conforms to the requirement of the Zoning Ordinance without that area. She mentioned if the courts determine that the discontinuance of Hebo Hibo Road was illegal, that lot will still meet all the required dimensional requirements, therefore, the Board can approve what is being submitted on the plan. Mr. Paul confirmed Ms LaPierre's explanation of the frontage.

Mr. Venell advised if the Town determines it is a public road and was discontinued illegally, the property line will revert to the rock wall and the Hebo Hibo Road will become a public way. He pointed out that is a corner lot with frontage on both Milton Mills Road and Hebo Hibo Road.

Richard Neal stated through no fault of the property owner, a dwelling was built prior to approval of the subdivision, therefore, the dwelling is built over the line of Lots #1 and #2. He said because of that situation, there will be two dwellings very close together in the field and if it were him, he wouldn't like that, but possibly the buyers don't have a problem with it.

Mr. Venell advised when the dwelling was constructed under the Building Permit issued, the property was all one lot and the dwelling was placed where it is for design purposes. He stated it meets all the required dimensional requirements. He pointed out there are many homes in Acton that are as close together as what is being proposed or even closer. He mentioned when the dwelling was constructed it was legal.

Sandra Jones explained the buyers have until the end of June to close on the property and she has allowed them to move into the dwelling. She said should the plan not be approved in time, they will lose their financing and she will be forced to put the property on the market again.

Mr. Venell stated that obtaining subdivision approval takes sometime and at this point, the review is at the preliminary plan stage. He explained the procedures for a subdivision. He mentioned they are in the first half of the process as the Board has just received the required information, but if there are no additional issues, the plan might be approved in a month.

To Ms Rix's question whether reducing the plan to two lots would negate the need for a subdivision review, Ms LaPierre advised whether there are two or three lots it will still be a

subdivision because the farm was sold previously when Patrick Fraser purchased it and that occurred within a five year period.

After ascertaining that there were no further questions or comments, Mr. Venell closed the public hearing at 7:45 PM.

D. UNFINISHED BUSINESS

1. **Deana and David Anderson – 1141 Lebanon Road – M262/L4 – After-the-Fact Conditional Use Permit for a Two-Family Dwelling** – Mr. Paul felt there wasn't much to discuss as it is a permitted use and there will be interconnected smoke detectors.

At this time, the Board addressed the Conditional Use Permit criteria and found all the items have been met.

A Motion was made and seconded to approve the Conditional Use Permit Application for Deana and David Anderson as the applicable criteria has been met. Cashin/Jones – Unanimous.

A Motion was made and seconded to approve a Conditional Use Permit for Deana and David Anderson subject to the following conditions:

- a) The septic system be installed prior to occupancy of the second dwelling.

b) The structure meet the 2000 Building Code standards.

Cashin/Jones – Unanimous.

2. **Sandra Jones – Minor Subdivision on Milton Mills Road** – Mr. Cashin asked whether Ms Jones ever thought of selling the property as one lot based on the problems that exist with the 20% slope situation, the evidence of the 25 year storm and his concern about the possible drainage path on the lots. He said if the Board were to continue their review, more information would be required.

Ms Jones stated she is losing money even with the three lots, therefore, she would lose even more with Mr. Cashin's proposal. She said she never saw the property before making the investment and she wasn't happy when she did see it.

To Mr. Cashin's question what did she use for storm data when she delineated the wetland area, Ms LaPierre explained it was based on vegetation.

Mr. Cashin pointed out there is disturbed vegetation from the February, 2010 storm on Lot #3. He asked if there was anyone present who had information concerning the affect of the 100 year storm of St. Patrick's Day on Lot #3.

Ms LaPierre explained the drainage path and mentioned that the land in the rear is included in the lot area, but nothing in the Critical Rural area is in the net lot area. She mentioned that the 2.2 acres does not include the land in the Critical Rural Zone as she had been told the Board didn't want it included in any of the net lot calculations.

Mr. Jones pointed out the lot areas exceed the requirement.

Mr. Cashin explained that a plan can extend 50' into another zone. He said he was questioning the building envelope of Lot #3 as he doesn't think it adds to the landscape of Acton. He pointed out some of the land cannot be used because it exceeds the 20% slopes which could create a problem with the leach field.

Mr. Paul indicated the location of the test pits for Lot #3 all of which are in the Rural Zone.

To Mr. Venell's question of whether that is were the building envelope is flagged, Ms LaPierre answered in the negative.

To Ms Jones' comment that is all right with a two-lot subdivision, but she doesn't want to begin the process again, Mr. Venell advised she only needed to remove the lot lines.

To Ms Jones' question whether she would need to indicate the building locations if she reduces the plan to two lots and move the new lot away from the existing lot, Mr. Venell advised that would be good for the purchasers, but it will still have to be outside the wetland area and meet all the dimensional requirements.

To Ms Jones' comment she has no problem moving the structure from its present location on the plan, Mr. Venell advised whatever she does will require a new plan.

To Ms Jones' question if they were able to submit the new plan for the Board's next Meeting, will they approve it since the purchasers' financing will expire on June 30, 2010 if they don't close before that time, Mr. Venell reviewed the Ordinance and determined all that might be needed is a new plan.

It was the consensus of the Board that they have no problem with that proposal.

Mr. Venell advised that the lot lines have to be adjusted and the location of the structure should appear on the new plan. He stated the Board could probably review it on June 17, 2010 and possibly approve it at that time.

To Mr. Venell's question whether any waivers would be requested, Ms LaPierre advised they would like waivers for the storm water management and erosion control as Note #9 states that the erosion control will be done with the best management practices.

Mr. Venell explained erosion control is generally determined by the builder and the storm water management is generally done when there will be new roads. He suggested that any waiver requests be submitted in writing.

To a brief discussion regarding the fact that the culverts in the area are owned by two different property owners, Mr. Venell suggested they speak with the Code Enforcement Officer who might recommend they contact the DEP. He confirmed that this proposal will be placed on the June 17, 2010 agenda.

3. **James Crowley and Scott Davis – Applecore, LLC – Amendment to an Existing Conditional Use Permit** - Mr. Crowley submitted a plot plan of the area which indicated what he is proposing to do now and in the future. He mentioned what he proposes will be done in phases. He said there will be no change to the parking lot or footprint for Phase I. He explained what he proposes for Phase II. He advised he spoke MDOT, submitted an application and was told they would conduct a site evaluation for Phase II even though it will not be done this year. He mentioned MDOT has requested a fence be installed which will be done and he was told he would get the written report four or five weeks after the evaluation. He advised when he receives the State's report, he will submit it for the Board's review. He briefly explained his discussion with MDOT and the suggestions they made up to this point. He said he is before the Board for approval of Phase I only so that he can open his business using the existing parking area.

Mr. Venell advised there is no need for the Board to review Phase I. He stated in reviewing the contents of the file as to what has been approved in the past, he noted there was no Conditional Use Permit for the docks and toys.

Mr. Paul stated the site has grown into the Conditional Use Permit and it is a good use of the property. He felt that the phases being done make sense. He acknowledged the business has expanded, but said he has no issues with it. He pointed out the Board could modify the existing Conditional Use Permit since what is being requested constitutes an expansion since the restaurant will go from 12 seats to 49 seats after Mr. Crowley installs the additional 37 seats.

Mr. Venell said his only concern is there is no Conditional Use Permit for the food and ice cream. He stated if the Board expands the original Permit, it can be done without a public hearing.

Mr. Cashin felt the changes and expansions that have occurred are substantial and after Phase II, the Board can review the work done as a Conditional Use Permit expansion.

Mr. Jones expressed his agreement with Mr. Cashin's comment.

At this time, the Board reviewed the March 18, 2004 Permit to determine what it covered.

Mr. Paul advised the Board could approve serving breakfast and lunch for the 49 seats and have the applicant return for Phase II.

Mr. Crowley stated he would like to return to the Board after MDOT makes their recommendations for the parking lot.

A Motion was made and seconded to amend the March 18, 2004 Conditional Use Permit for James Crowley to allow up to 49 seats and the serving of breakfast and lunch with the condition that the Code Enforcement Officer sign off on the dock and parking for the expanded use. The existing signage for the restaurant can be retained, but a new sign will be erected for the docks subject to the approval of the Code Enforcement Officer with respect to location. Jones/Gallagher – Unanimous.

D. **NEW BUSINESS** - There was no new business to come before the Board.

E. **CODE ENFORCEMENT OFFICE BUSINESS** - There was no Code Enforcement Office business to come before the Board.

G. **OTHER BUSINESS**

Joint Grant Application – Mr. Cashin explained on Wednesday, June 10, 2010, Linda Schier will be signing the grant application with the Wakefield Planning Board Chairman. He read the cover letter stating that Mr. Venell would also have to sign the application as it requires the signatures of all communities requesting the grant. He invited anyone who is interested in the project to attend the signing on June 10. He reiterated his past statement that this is a non-matching fund grant, therefore, no funds have to be appropriated by the Town.

H. **ADJOURNMENT** - The Meeting was adjourned at 9:00 PM.

Respectfully submitted,
ANNA M. WILLIAMS

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Recording Secretary