

**W. T. PLANNING BOARD MEETING, FEBRUARY 9, 2009, 7:30 P.M.**

**PRESENT:**, Ginny Jones, Susan Silva, Leah Smith, Eileen Maley

**ABSENT:** David Douglas

**ALSO PRESENT FOR ALL OR PART OF THE MEETING:** Reid Silva, Robert (J.C.) Murphy; Daniel Perry, Ron Rappaport, Cynthia Aguilar, Ann Bassett, Doug Hoehn, Geoghan Coogan, Glenn Hearn, Bill Veno, Ashley Hunter, Kristine McDonald, Michael Jampel, Simone DeSorcy

**MINUTES**

Minutes of the 1/12/09 meetings were approved as written.

**CORRESPONDENCE**

**In:** Harris Krinsky re. Special Ways;  
J.C. Murphy re. Special Ways;  
Michael Fontes re. Special Ways

**NEW BUSINESS**

**Robert J. Murphy, Form A Application, M10 L268:** Attorney Daniel Perry presented the Form A plan. He said that the application was to request to change the 61,380 sq. ft. recreation area (shown on a 1973 subdivision plan) to a buildable lot. He noted that the lot has the required frontage to qualify as a Form A. He said that Mr. Murphy has had a lot of back and forth with the Town as to whether there is a permanent encumbrance on the recreation lot. He said the current plan qualifies for ANR endorsement. He said the Planning Board has the right to ask for a recreation area in a subdivision plan, but that the encumbrance runs out after three years.

Planning Board Counsel Ron Rappaport noted his great respect for Mr. Perry, but said that in his opinion the Planning Board could not legally endorse the plan as an ANR. He summarized his written opinion dated February 9, 2009, citing case law. He said the designated recreation lot was part of an approved Form C plan. The Planning Board has no authority as part of a Form A application to remove this designation; it would be depriving the public and property owners the opportunity to comment. Should Mr. Murphy want to change the designation, he must file an amendment to the Form C plan, and the Planning Board must hold the required advertised public hearing. The Board must deny this Form A application; the property owner cannot achieve his goal via this route. Further, the size of the lot will figure into the decision if/when a Form C amendment application is filed. He said that as the recreation lot was offered by the applicant, it is still encumbered, and the Planning Board does not have the authority to grant what is being asked for.

Ron Rappaport said that he had drafted findings supporting his opinion; should Board members be in agreement, they must adopt the findings as their own.

Leah said that based on Ron Rappaport's presentation, the Board had no choice but to deny the Form A. Other board members voiced agreement. Susan noted that the abutters

have the right to have their voices heard. Leah said this must come back as a Form C amendment.

Daniel Perry asked whether the lot's size would be grandfathered; Ron Rappaport said no, because it is not considered a lot under Section 4181L.

Board members took a few minutes to review Ron Rappaport's opinion and drafted findings (it was noted that they had received and reviewed both documents earlier in the day via e-mail).

Susan said she was uncomfortable with this Form A application, and felt that it should proceed as a Form C. Leah said that Ron Rappaport had made a compelling case.

Ginny made a motion to deny the Form A application based on the reasoning and case law cited in Ron Rappaport's decision, and to adopt the findings he drafted as the Board's; all in favor.

**Reid Silva for Martha's Vineyard Savings Bank, Form A Application, M16 Lots 99 & 224:** Reid Silva presented a Form A plan showing a lot line change which would keep the areas of lots the same. He said the bank is designing a new building on one of the lots, requiring an upgraded septic system. In order to obtain the necessary separation of septic and wells, the transfer of this small area is necessary. Ginny made a motion to endorse and sign the application, noting that it qualifies as a Form A (and not a Form C) as it is a lot line change; all in favor.

**Reid Silva for Lynne Whipple, Form A Application, M32 Lots 6 & 7:** Reid Silva presented a Form A plan showing a lot line change which would result in Lot 7 gaining 1.76 acres. The two new lots would be 4.6 and 4.86 acres, respectively. Ginny asked whether the access to either lot would be changed; Reid Silva said no. Ginny made a motion to endorse and sign the application, noting that it qualifies as a Form A (and not a Form C) as it is a lot line change; all in favor.

**Zoning Bylaw Amendment Public Hearing, New Special Ways, Revised Regulations:** Susan read the hearing notice and opened the public hearing. She introduced Ann Bassett, Chair of the Byways Committee, which proposed the amendments. Ann Bassett thanked MVC/Land Bank staff Bill Veno for all of his assistance. She said that the two proposed Special Ways, Stoney Hill Path and Checamo Path both pre-date colonial times, and are a good first project for the reconvened Byways Committee. She gave a history of the process to date.

Michael Jampel asked what the effect of the new DCPC would be in the first year period. Would there be a total moratorium? Bill Veno said that the Town cannot issue development permits within 20 feet of either side of the centerline. Glenn Hearn asked

what would happen if a project doesn't need to cross the Special Way? Bill Venio said it would be allowed as long as construction is out of the 20-foot area.

Michael Jampel noted that in regulation #5, the words "excavation, fill" were added. He said that some excavation might be needed to cross over the Special Way, especially if there is a banking. Bill Venio said the applicant would need express permission to do so.

There was a discussion that the following portion of Section 6.2-4 should be added to Uses Requiring Special Permit from the Planning Board "Where direct vehicular access is not allowed, vehicles may cross such a way at or nearly at right angles but may not travel along the way for any distance to gain access to a development." Bill Venio noted that there are examples on the Island where this has occurred without oversight and there is now runoff and flooding on some Special Ways.

Kris McDonald had some concerns about the process. The Byways Committee initially presented that the 2 new Special Ways would be added within the existing framework of regulations. Now the Committee is asking for substantive changes to the regulations. Also, were abutters to other Special Ways notified that amendments to the regulations were being proposed? Bill Venio said that there are two separate issues: adding two new Special Ways, and changing the regulations for all Special Ways. Kris McDonald said that changing the regulations was not brought up during the Byways Committee's initial meeting with property owners. There was a discussion about notification requirements; notifying the abutters along the two proposed new Special Ways was a courtesy, not a requirement.

Correspondence from the following people was read: Harris Krinsky, Geoghan Coogan for Michael Fontes, and J.C. Murphy.

Michael Jampel said the area around Stoney Hill Path near Old County Road is densely developed. The road has become a dirt bike track, and is in bad shape because of it. How can the town police this? Public liability was discussed. Ann Bassett said that the Land Bank maintains Special Ways.

Re. the Fontes property, Susan asked whether the Special Way can continue to be used to access it if it is his deeded right? Ann Bassett said that he could also use Trotters Lane. It was noted that this is a private way, and Mr. Fontes does not have the right to use it. Ann Bassett said that neighbors will want to cooperate and let him use that access as they will be looking to protect these special ways.

Bill Venio said that some people will have the right to use Special Ways as access to their properties. This is a public policy statement that the Town wants to minimize vehicular use of these ways. Leah said the Town also wants to protect them from being blocked off.

Language proposed by Harris Krinsky was read and discussed. Ginny said that she didn't think that many lots would be affected. Bill Veno said that Mr. Krinsky believes that the "escape clause" is discretionary via special permit. There was agreement among Board members that the review should be discretionary, on a case-by-case basis.

Ann Bassett said that nothing in this bylaw can make a lot unbuildable. Geoghan Coogan said not true: if you can't get access to a lot, if the special permit is denied, your lot is unbuildable. Ginny said this bylaw neither grants nor extinguishes any accesses.

Ginny made a motion to send the amendments to the Special Ways regulations, including the shift of language from Section 6.2-4B to 6.2-4C as previously discussed, to the Selectmen to be placed on the ATM warrant; all in favor.

Leah made a motion to recommend that Stoney Hill and Chicamo Paths be designated Special Ways, and voted on at Town meeting; all in favor.

Bill Veno said that the MVC must now look at the modifications to the regulations. Leah made a motion to forward the proposed language to the MVC; all in favor.

**Step Increase:** Board members unanimously approved Simone's step increase.

## **OLD BUSINESS**

**Doug Hoehn, Michael Jampel and Kris McDonald re. Special Permit:** Kris McDonald said they needed some clarification on the intent of the conditions of approval for the special permit granted for Multi-Family Housing off Edgartown Road. The conditions say that 2 of the 3 units must remain affordable in perpetuity. The zoning bylaw states that people earning up to 140% of median income can qualify for affordable housing. The decision does not specify at what income level the 2 affordable units must be.

While drafting the deed restrictions, it was noted that by State law, only housing at 80% of median income or below can remain affordable in perpetuity; anything above that can remain affordable for up to 30 years, at which time the affordability clause can be renewed at 20 year intervals (if anyone remembers). Kris McDonald said she wanted to clarify what the Board's intent was. Ginny said there was no doubt that they were to remain affordable in perpetuity; Leah said that the affordability percentage was not specified, anything up to 140% would qualify.

It was discussed that there was language in a House Bill stating that Island towns could adopt covenants allowing housing up to 140% to remain affordable in perpetuity; however, this would need to be adopted by each individual town at town meeting. Ron Rappaport's office is drafting language to be placed on the warrant. This time frame, however, including the up-to-90 day review period by the Attorney General does not accommodate the sale of the subject property from Doug Hoehn to Michael Jampel.

Because under the current framework the two units cannot be affordable in perpetuity AND up to 140%, Kris McDonald asked if it would satisfy the intent of the Planning Board if Michael Jampel would agree to amend the deed rider language should the warrant item be passed at Town Meeting. This way the sale could go through under existing laws. Board members said that would meet their intentions, as long as it was put in writing and signed by Michael Jampel.

Ginny said Michael Jampel had previously said that a different entity, like Island Housing Trust, would own the property in order to ensure that the units remain affordable in perpetuity. Michael Jampel said that didn't work out, as IHT is reluctant to take responsibility for the existing house (too small) and didn't want any connection to the market rate house.

**Peter Williams, Light Industrial District:** It was noted that the MVC's public hearing notice states that Peter Williams' proposal for his property has now more than doubled the number of trucks and pieces of equipment compared to the project the Board referred to the MVC in July. Board members directed Simone to draft another letter to the MVC outlining all of their concerns.

The meeting was adjourned at 10:00 p.m.

Respectfully submitted,  
Simone DeSorcy, administrator

**Approved March 9, 2009**