

Present: Don Saltzman, Jane Connolly, Vice Chairman; Ridge Young, Katie Gregory, Joe Limone (late) Absent: Stephan Grozinger-Chairman, and David Allen

Also present: Tracy Kulikowski, Land Use Director

Meeting on tapes 1 and 2, dated 7/6/10

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Jane Connolly, Vice Chairman, presided over the meeting in the absence of the Chairman

**RECEIPT OF APPLICATION: MODIFICATION TO SUBDIVISION APPROVAL – FAR HORIZONS SUBDIVISION, 10 LADDER HILL (ADC – 10 LADDER HILL LLC) (SPATH)**

Charles Spath of the Huntington Company LLC, came forward, representing Mr. DeCaro, the owner of the subdivision. The applicant has returned to the Commission because one of the envelopes to a neighbor of the subdivision, did not have the correct address. The application has no changes and nothing is different.

Katie Gregory raised the question regarding re-voting the waivers previously granted with the approval. Jane Connolly, Vice Chairman; asked for the prior record to be incorporated including the maps.

The envelopes will be mailed to the neighbors and a public hearing will be on Monday, July 19<sup>th</sup>, prior to the summer recess.

Katie Gregory moved that the Commission receive the application for a modification to subdivision approval for Far Horizons Subdivision. Seconded by Ridge Young. Vote in favor (4) Joe Limone, Stephan Grozinger and David Allen absent.

**RECEIPT OF APPLICATION: SPECIAL PERMIT – HOME OCCUPATION, 47 BUTTONBALL, DR. NEERU KRAUSHIK AND DR. SOMESH KRAUSHIK**

Dr. Neeru Kraushik presented his application for a special permit home occupation for he and his wife to practice naturopathic and ayurvedic therapies. He explained to the Commission that only he and his wife would be involved in the home occupation with no outside help. They also own their home. The practice would be internal and the only proposed change would be using the garage. A discussion followed to include the requirements of the home occupation regulation and what Dr. Neeru Kraushik proposes to do. The Commission felt that Dr. Neeru Kraushik did not need a special permit now but if he did hire another person, he would have to return to the Commission for a special permit. Dr. Neeru Kraushik then withdrew his application.

DISCUSSION CONTINUED: ENFORCEMENT, ORDER OF REMOVAL, DATED 9/11/09, JACOBY, 11 BLUEBERRY HILL, IN-GROUND POOL IN THE SIDE YARD SETBACK (GUIDERA)

Present for this discussion were Mr. and Mrs. Jacoby, their son and their lawyer, Attorney George Guidera.

Vice Chairman Jane Connolly read the following into the record:

9.11.09 Order of Removal of Swimming Pool within the setback.

Section 8-2 empowers towns such as Weston not only to promulgate zoning regulations but to enforce them.

Under Section 321.5 of our regulations, both buildings and structures are required to be set back a minimum of 50 feet from the front lot line and 30 feet from the side and rear lot lines. It's been conceded that the swimming pool here lies partially in the side setback. The owners claim that under Sec. 8-13 (a), this swimming pool can remain since it has been in place for over three years and no legal action has been instituted to enforce the setback regulation. This argument can prevail only if the Commission finds that a swimming pool is a building, because section 8-13 (a) provides, in relevant part,: ""when a building is so situated on a lot that it violates a zoning regulation of a municipality which prescribes the location of such a building in relation to the boundaries of the lot... and when such building has been so situated for three years without the institution of an action to enforce such regulation, such building shall be deemed a nonconforming building in relation to such boundaries..."

The owners claim that under Ct. Statute 8-1 (a) (a), the term building means "any structure" (there are exceptions not relevant here). However, that section pertains to "Ridge line Protection: Definitions" found and discussed in the very next section, section 8-2. 8-1 (a) (a) is clarifying terms used in 8-2(c). If the legislature meant to broaden the use of the defined terms, it would not have included the words "Ridgeline Protection: Definitions."

Further, the cases I reviewed disallowed protection for "structures" which could not reasonably be considered "Buildings," such as decks, billboards, and outdoor movie theaters.

Most significantly, Section 610 of Weston's Zoning Regulations defines "building" as "Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattel." This swimming pool has no roof, is not supported by columns and was not intended to shelter, house or enclose people, animals or things. Section 610 then defines "structure" as anything constructed or erected, the use of which requires location on the ground or attachment to something

JACOBY CONTINUED:

having location on the ground.” Notably, section 610 specifically includes a swimming pool in its list of what constitutes a structure in Weston.

Lest there be any doubt, section 347 of Weston’s regulations states: “All swimming pools, tennis, paddle and other playing courts shall be considered structures and shall be set back from property lines at least the minimum distance required for main buildings”

Therefore, owner’s swimming pool here cannot be considered a building and they should remedy the violation asap.

Mrs. Jacoby went over the history of her application and stated that her husband plans to talk with Mr. Vogel (next door neighbor) and the money situation regarding a land swap. Also there was a further discussion regarding how the measurements from the surveyor were determined and possibility of getting a certified licensed surveyor to sign off. Mrs. Jacoby stated that she has contacted a surveyor and is waiting for a reply.

Vice Chairman Jane Connolly requested the Jacoby’s to decide on a definite plan of action and return to the Commission in September.

Don Saltzman moved that the Commission accept the document written by Vice Chairman Jane Connolly, to go into the record of this case and the Jacoby’s to come up with a definite plan. Seconded by Katie Gregory. Vote in favor (4-0) Katie Gregory nay and Stephan Grozinger and David Allen absent.

**DISCUSSION/DECISION: REFERRAL PURSUANT TO 7/7/08 LETTER OF ZONING ENFORCEMENT OFFICER AND SECTION 322.8 AMENDED ZONING PERMIT APPLICATION, INTERIOR RENOVATION, BUILDING NO. 1, WESTON SHOPPING CENTER, 190 WESTON ROAD (JOSH TOLK, MANAGER)**

Josh Tolk presented a new application with pictures, showing the replacement of the existing oil tank and the existing condensing units. There would be nothing on the roof and no additional fencing on the ground. A discussion followed. The propane tank has been approved by the Fire Marshal as the separation issue is gone.

Jane Connolly, Vice Chairman stated that it is a replacement of existing equipment and the Zoning Permit requested will be drafted for signature by the Commission. Tracy Kulikowski, Land Use Director stated that she will draft it and have the Vice Chairman sign it.

Don Saltzman moved that the Commission approve the amended application for the Weston Shopping Center for the interior renovations of Building No. 1, at 190 Weston Road, as shown on the submitted plans, including the replacement of two existing HVAC units and oil tank, making it less of a conformity. Seconded by Katie Gregory. Vote in favor (5-0) Stephan Grozinger and David Allen absent.

DISCUSSION/DECISION: RELEASE OF BOND FOR THE BRENDA AUSTIN SUBDIVISION

Jane Connolly, Vice Chairman read the Town Engineer's memo, dated July 6, 2010, into the record, as follows:

"I have inspected the completed work concerning site development construction on the date of July 2, 2010, at the above referenced site. The work was satisfactorily completed according to the original Planning Commission approval. The remaining bond of \$40,000.00 can be released to the applicant"

also letter from Peter Romano of Land-Tech Consultants, Inc. dated June 30, 2010, as follows:

"Based on our observations of the completed subdivision work for the "Brenda Austin Subdivision" in the vicinity of Hidden Springs Drive in Weston and the work recently requested by the Weston Planning & Zoning Commission, it appears that the work has been completed in substantial conformance with plans prepared by our office, dated September 3, 2004.

I am hereby requesting on behalf of our client Mike Antolino, the current owner of the "Brenda Austin Subdivision" that the Subdivision Bond being held by the Planning & Zning Commission be released."

A discussion followed:

Don Saltzman moved that the Commission release the subdivision bond for the Brenda Austin Subdivision per the Town Engineer's memo, dated 7/6/10, in the amount of \$40,000. Seconded by Ridge Young. Vote in favor (5-0) Stephan Grozinger and David Allen absent.

APPROVAL OF MINUTES:

Jane Connolly moved that the Commission approve the minutes of June 21, 2010 with correction. Seconded by Katie Gregory. Vote in favor (5-0) Stephan Grozinger and David Allen absent.

CHAIRMAN'S REPORT

The Zoning Officer and the Town Attorney called Joe Limone to say there were no outstanding issues to report for this week. Attorney Sullivan did arrive later to discuss with the Land Use Director some issues to include, Sarfraz, Fash trial, and Coley.

DISCUSSION: PROPOSED CEMETERY REGULATIONS

After a discussion, Jane Connolly, Vice Chairman, made a motion that the Commission approve moving the public hearing on the proposed cemetery regulations from September 20<sup>th</sup>, to October 18<sup>th</sup>. Seconded by Joe Limone. Vote in favor (4-0) Katie Gregory voted no. Stephan Grozinger and David Allen absent.

Meeting adjourned.

Respectfully submitted.

Joan Lewis, Administrative Assistant

Approval: Vote to approve the minutes with correction on 7/27/10