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Town of North Andover
Planning Board
Minutes of the Meeting
November 18, 2008 @ 7:00 pm
@ Town Hall, 120 Main Street
top floor conference room

Members present: John Simons, Chairman
 Jennifer Kusek, Clerk
 Timothy Seibert, regular member
 Michael Walsh, regular member
 Courtney LaVolpicelo, alternate

Member absent: Richard Rowen, regular member

Staff present: Judy Tymon, Town Planner
 Mary Ippolito, Recording Secretary

Chair called the meeting to order at approximately 7:10 pm and proceeded to announce the postponements.

Chair announced the POSTPONEMENTS:

John Cahill – 166 Salem Street, Map 37D, Parcel 21. Definitive Subdivision known as The Captain Nathaniel Berry Homestead, consisting of a new 292 foot long roadway and 3 new proposed lots each containing 25,000 s.f. & existing lot containing 32, 174 s.f. with existing single-family dwelling within R-3 zoning district. Meeting not closed. **Mr. Cahill submitted a waiver of time constraints until December 16, 2008 for the record.**

John Cahill – 166 Salem Street, Map 37D, Parcel 21. Watershed Special Permit to construct a new 292 foot long roadway and 3 new single-family homes, portions of the roadway, one house and a storm water detention/infiltration basin will be within the non-discharge buffer zone. Meeting not closed. **Mr. Cahill submitted a waiver of time constraints until December 16, 2008 for the record.**

1 **Chair called for CONTINUED HEARING:**
2

3 **David Pickles, Jr. 314 Salem Street, Map 37B, Parcel 68** – Watershed Special Permit
4 to add a mudroom & 2 car garage to existing residential dwelling in the Non-Discharge
5 zone within R-3 zoning district. Meeting not closed. Draft decision.
6

7 Judy talked to Mr. Foster, notes were to be added to the plan prohibiting lawn and garden
8 fertilizing products. Judy submitted a copy of the plan tonight. VHB recommended
9 erosion control on all sides of limit of proposed work N. S. E. W. Judy shows erosion
10 control on two sides now; it would be overkill to have it all around 4 sides, as the plan is
11 sufficient now.
12

13 Please note: Jennifer just arrived.
14

15 MW asked if Judy needed anything more in the draft decision? Judy added the erosion
16 control in the decision, and has a letter from the wetland scientist that she included in the
17 decision.
18

19 Charlie Foster spoke about silt fence and hay bales that were added to the house to take
20 care of any run off from the area.
21

22 Motion by MW to close public hearing tonight, 2nd by JK, vote was unanimous.
23

24 PB edits: Finding of Facts #1 spell out bordering vegetative wetlands....no further
25 comments tonight.
26

27 Motion by MW, to approve the Watershed Special Permit as amended, 2nd by TS, the
28 vote was unanimous. 5-0
29
30
31

32 **Chair called for CONTINUED HEARING:**
33

34 **Bank of America, 154 Main Street, Map 41, Parcel 33** – Site Plan Review Special
35 Permit to expand existing parking by removing the rear drive-through aisle and increase
36 the parking area to accommodate an additional six parking spaces for a total of 18
37 parking spaces within G-B zoning district. Meeting not closed.
38

39 Judy updated the PB. Judy reviewed w/applicant and engineer minor issues that VHB
40 brought up, a new plan was presented, and a letter from applicant's engineer addressing
41 VHB's concerns. Tonight is just a catch basin issue; Judy handed out copies to the PB.
42 Granite curb area be continuous in a certain section, and catch basin be moved to
43 proposed street line and become a double grade catch basin, per a meeting w/Judy, Gene
44 Willis, and engineer this afternoon.
45

1 Michael Joyce, Engineer, presented tonight. Gene Willis wanted a manhole on top of
2 existing catch basin, to catch more flow, which engineer provided on the plan tonight.
3 Judy submitted memo from Cavanaro Consulting,
4 Engineer, which addressed all of VHB's comments on tonight's plan. See #17 on memo,
5 regarding providing ground water elevation....VHB wanted to see visual proof of where
6 ground water will be 25 feet below surface. All 3 agreed the traffic pattern now works
7 pretty well, looking at moving cross walk further back on Water St. as opposed to having
8 it closer to intersection. Maybe some small integration of landscaping, and Town will
9 work w/bank on curbing, sidewalk, or landscaping issues. This was approved by
10 Con/Com. Keep hearing open and draft decision.

11
12
13 **NEW PUBLIC HEARING:**

14 None

15
16
17 **Chair called to APPROVE MINUTES OF THE MEETING:**

18 October 21, 2008 Minutes

19 November 12, 2008 Minutes

20
21 Motion by JK to approve the October 21st and November 12th "Minutes", 2nd by TS,
22 vote was unanimous.

23
24 **DISCUSSION:**

25
26 Chair spoke w/School Committee for the proposed Pre K School. Chair advised them he
27 wanted a complete application submitted for Site Plan Review Special Permit.

28
29 Pat Saitta has not presented an application to the Planning Department yet. Judy stated in
30 spite of Dover Amendment educational intuitions can be subject to certain requirements,
31 height, open space is reflected in site plan review and possibly parking. Chair will call
32 again to get them going. Attorney Carol McGravey called Judy to ask what the School
33 Committee was coming before the PB for? Judy has not heard anything back from the
34 School Committee.

35
36 Chair will waive the fee, but will look at any drainage issue and have Gene Willis do the
37 review, there's no need for VHB to review this project.

38
39 Judy has Boston Hill for discussion on PB Dec. 2nd agenda.

40
41 70 Elm St. wireless facility is on that agenda as well.

42
43 Judy left a message for engineer for 674 Turnpike St., and let them know they can
44 withdraw their application, it doesn't meet zoning, it's going to Con/Com tomorrow night
45 unless it gets withdrawn.

46
47 166 Salem St. is postponed until December 16th.

1
2 Mr. Stanley of Country Club Estates didn't submit a Watershed Special Permit
3 application to add living space above his garage.
4

5 40R and 40D is designated as growth area, present to the BOS and to PB on Dec 2nd.
6

7 Chair asked about downtown planning? Judy stated the meeting was well-attended,
8 business owners, residents, DPW presented their preliminary design for street
9 landscaping design, and redoing cross walks. VHB presented a draft of zoning bylaw and
10 Judy sent it to PB in their packets, Judy is still reviewing it. Water St. to High Street and
11 downtown area will be looked at.
12

13 Down Town is not that great what will it take to get it to where we would like it to be?
14 More discussion regarding parking or lack there of...DPW had visuals to comment on.
15 We need services and stores for local residents, grocery, pharmacy, dry cleaners,
16 hardware store etc. Is it possible to use the front of the lot at Bradstreet School for
17 parking? Chair feels we don't have a parking problem down town, if anything there isn't
18 enough people coming down town. DPW has been looking at how other down town
19 areas such as Salem and what kind of materials they used in their cross walks. Amesbury
20 has the same bones as us not many cross streets and done a lot of grants for many years.
21 Pedestrian access was discussed from intersection of Water and High St. down to
22 downtown area and possibly along the back area where the pond is. TS stated the
23 business owners here are united in that parking is a problem. Chair stated unless you can
24 park in front of the building they assume there is a parking problem.
25

26 TS stated there is a plan to put a pedestrian walk way around one of these ponds? No one
27 knows of it? Would we run into wetland issues with it?
28
29

30 Chair called for discussion with Attorney Tom Urbelis (time is 7:45 pm).
31

32 Update on telecommunications act. Federal communications has superceded our local
33 bylaws. Towers today are equivalent to telephone poles of yesterday. In 1996 Congress
34 enacted to provide high quality and encourage rapid use in telecommunications. Local
35 Government may not discriminate and treat one carrier to the detriment of another. Local
36 Government may not take actions of prohibiting personal wireless services. Local
37 Government may not limit placement of wireless facility on basis of RF emissions. FCC
38 may decide and not a local board. FCC said applications said it must be in writing and
39 substantial evidence in a written record. Fed's review the record in front of local board
40 and determine if there are substantial records in order to justify a decision. In many cases
41 the court will look at records in the record to see if it is substantial to make a decision.
42 Atty. General reviews a proposed bylaw to see if it violates the Communications act.
43 Atty. Urbelis spoke on ordnances etc.
44

45 Board should be looking for the carrier to provide the information. Engineering evidence
46 of substantial gap in coverage of wireless transmissions. Analysis provided of their

1 compliance of the zoning bylaw of Section 8.9 kind of engineer plan, and detailed
2 information required. Structure analysis of a proposed tower. Evidence of a legal right
3 to the site has legal right to construct tower. And no alternate site is available to provide
4 cover and explain why they have not used an alternate site. Provide evidence that co-
5 locating on another tower is not an alternative. Provide evidence with compliant
6 w/Federal standards. Provide evidence of esthetic results, float a balloon at height of
7 tower and simulate and take pictures as to where the tower will be visible from. Provide
8 something from historic commission of their views of the esthetic view of tower. Provide
9 funds for a pier review and carriers engineer report.

10
11 PB should look for opponents to provide documents in the record of their opposition.
12 Judge will look in the record for this. Opponents should provide engineer reports
13 w/regard to significant gap in particular. They should provide any alternate sights that are
14 available. Provide legal arguments from their attorneys why PB should take issue
15 w/taking certain action. If property values will diminish, opponent should provide these
16 loses of property devalued. Provide esthetics from their engineers, such as balloon tests.
17 Provide written communications citing specific reasons for what they want the PB to do.
18
19

20 PB should read the bylaw section 8.9. It's different from a lot of the other bylaws and it's
21 not something that PB deals with very often. Carrier will be requesting some kind of
22 relief from the Bylaw, there are specific filing requirements in the bylaw have they been
23 met? Section regarding setbacks such as 600 feet, in event a preexistent structure is
24 proposed as a mount etc. set back in existing zoning district should apply.
25

26 Carrier will say there is a significant gap; Town Meeting voted a certain provision of the
27 Bylaw so PB should enforce this, and then PB is caught between rock and hard place?
28

29 PB makes their decision based on substantial information in the record. Not just it
30 doesn't fit in the neighborhood, PB needs substantial evidence to support their decision.
31

32 On occasion courts have upheld certain denials. In Lester Mass, there was substantial
33 evidence to support board denial, showed 150 foot tower should be painted in red and
34 white topped by at least one beacon to light the tower and 150 foot tower to be placed on
35 top of 50 foot hill, middle of clear field, in center of town, visible by 25 percent of
36 population in town and close to school, etc. With this evidence the court would uphold
37 the denial of this.
38
39

40 Board may not discriminate among carriers, has to be consistent. Denial must not be
41 based on environmental effects.
42

43 Property values in decline are not substantial evidence, their needs to be expert evidence
44 how this tower is going to affect their property. Board must take into consideration the
45 time constraints etc. Atty. Urbelis wants to talk in general tonight.
46

1 TS asked if there are several alternate sites then it would be simple because there is
2 existence of alternate sites? Atty. Urbelis stated there has to be proof that alternate site
3 will close the gap and it has to be available to purchase. Example; the IRS building in
4 Andover, even if it were available would you try to buy the IRS? Proof needs to be done
5 by applicant on gap in coverage.

6
7 Atty. Urbelis stated it's up to the PB to make a determination if it has to go somewhere if
8 there are a few alternate sites.

9
10 TS asked if it goes into an existing structure, and underlying zoning applies, do you know
11 what that setback requirement is? Atty. Urbelis stated it complied w/set back of the First
12 Calvary Baptist Church.

13
14 TS asked would it make a difference if there were a school in that building?

15
16 Chair asked what hurdle the opponent has to achieve if existing structure is higher than
17 on new freestanding structure? Atty. Urbelis stated make an argument there is no gap,
18 then prove it. Atty. Urbelis stated various types of objections made, significant, gap in
19 engineering? Is there alternative? There has to be substantial evidence.

20
21 MW stated assumptions don't count, and then somebody comes in with certified real
22 estate appraisal? Atty. Urbelis stated an appraisal would come in from the applicant
23 saying it won't.

24
25 TS do we have any authority to postpone any applications until next Town Meeting?
26 Atty. Urbelis stated no.

27
28 TS asked who determines and constitutes it's a pre-existing structure? Atty. Urbelis stated
29 the Building Inspector. Can we override what the Building Inspector says? Atty. Urbelis
30 stated no comment

31
32 TS in regard to the First Calvary Baptist Church was decision made by the Building
33 inspector? He determined it was going into a pre-existing structure.

34
35 MW stated would Attorney Urbelis like to comment on the document in their packet?
36 Atty. Urbelis stated he would talk about the telecommunication part of it (doesn't want to
37 step on telecommunications committees toes).

38
39 MW has question on draft regarding setback of 800 feet? Judy stated current draft
40 proposes 800 feet. The new committee has not drafted their own draft.

41
42 Chair wants a copy of Atty. Urbelis' presentation tonight. Attorney Urbelis stated he will
43 send the PB something.

44
45 TS stated if his church is coming before PB for an antenna should he recuse himself?
46 Atty. Urbelis stated if you wish. TS stated in 2003 they wanted to put a tower in and it

1 was not put in. Do you know why they won that case? Chair stated they just backed
2 away and withdrew it.

3
4 Chair asked a question on the proposed Pre K School. Atty. Urbelis stated he sent a letter
5 to the Planning Department it will come in tomorrow's mail.

6
7 Motion by JK to adjourn the meeting, 2nd by TS, meeting adjourned at 8:30 pm
8

9 **PLANNING BOARD MEETINGS:**

10 December 2, 2008
11 December 16, 2008
12
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15 **NOTE:** The Planning Board reserves the right to take items out of order and to discuss and/or
16 vote on items that are not listed on the agenda.

17
18 By order of the Planning Board

19
20 Approved
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