



**Office of
Kingston Board of Appeals**
Town House
26 Evergreen Street
Kingston, MA 02364

**Zoning Board of Appeals
July 18, 2007
Business Meeting Minutes**

Members Present: Larry Hunt; Paul Dahlen; David Rose; Carl Pike; John Haas, George Boerger
Others Present: Jonathan Silverstein, Town Counsel, Tom Bott, Town Planner, Maureen Thomas, Conservation Agent (8:15)

Mr. Haas opened the meeting at 7:30 pm.

7:30 Mullen

Mr. Rose read the public hearing notice. Julie Johnson of Custom Home Design and Paul Mullen were present for the hearing to request a special permit to allow a second floor addition to a single family residence increasing the building size and to request an increase of the non conforming side set back. The house has been in the family since the 1940's and was used as a summer home. The Mullens would like to make it a permanent home and add a second floor. Ms. Johnson stated that Mr. Armstrong suggested they move the footprint of the house back, however that created an issue with conservation commission. The applicant will be going before conservation commission in the next few weeks as some of the concrete foundation infringes on the flood zone and they may require piers to conform with conservation approval. They are also proposing a four foot walkway around the side of the house. There is no change to the foundation as there will be an overhang. They need to determine the load bearing capacity of the soil. The tallest part of the house is 33 feet and it will remain a two bedroom. Parking was discussed and there is currently off street parking with enough room on the lot for additional parking if need be. It was discussed that the applicant would come back before the Board after the meeting with Conservation Commission. Mr. Haas asked if any members of the public were present to speak about the project. No one came forward. Mr. Boerger moved to continue the hearing to September 5, 2007 at 7:30 pm. Mr. Rose seconded. All in favor.

7:55 Wingate

Mr. Rose read the public hearing notice. Present for the hearing were Lawrence Winokur, Attorney, Theo Kindermans and John Massauro, Engineer (Geller DeVellis), Steve Levin and Alex Spiegel (Continental Wingate Company), Jessey Saborsky (Architectural Team) Dan Mills, Traffic Engineer

Mr. Winokur stated that the applicant has gone before Conservation Commission twice and will again on July 24th. They have been before the Planning Board and there was favorable action on the site plan review. There is currently a draft of a favorable decision of the Planning Board with conditions. They have also met with the Historical Commission concerning the two old buildings on Main Street. Mr. Winokur referenced the letter from the Fire Department dated June 28, 2007 and an email from the Health Agent. He

added that the Planning Board had no major issues concerning parking and that the Water Department had no major issues and that Colar & Colantonio reviewed the plans and will make minor recommendations which the applicant feels they will have no objection to.

South Shore Survey has reviewed the drainage report. There were discussions concerning sidewalks and the scenic road layout and once the is completed Planning Board will have to look at it again. It was a condition of the site plan that the sidewalks go in.

Theo Kindermans went over the landscape plan and noted changes to the plan by adding additional plantings to screen the abutters and changes to the variety of plant material and added landscape to preserve the scenic look along Lake Street. They reduced the light poles by one-half and relocated some to they would be right in front of the homes so abutters couldn't see the lights. The lights will be controlled by a photo cell timer.

Steve Levin, President of Continental Wingate Development went over the plans showing the styles of the buildings the buildings

Dan Mills, provided a handout dated July 18, 2007 and went over the same. He added that sidewalks and crosswalks will be added to Lake Street.

Robert Heath, Fire Chief, commented that the applicant has been very good to work with. He stated that the facility does generate a number of emergency responses. He referenced his letter of July 18, 2007. He requested that the applicant provide funds for an ambulance to compensate for the additional demands of the facility on the fire department. Mr. Winokur wanted to clarify that the responses to 14 Chipman Way Mr. Heath referenced was on property that is not owned by the applicant. He added that the development will pay between \$500-600,000 in taxes. There were further discussions concerning the amount of times in the year the fire department has responded to this location and the applicant making a donation to the town to offset the cost of a new ambulance. The Board was polled and the consensus was that some kind of contribution toward an ambulance is a reasonable request given the type of facility that it is. Mr. Winokur offered the amount of \$113,000 toward the ambulance fund on behalf of the applicant. The Board wanted a drop dead date for the funds to be received by the town and there were further discussions concerning the date in which the funds would be required to be paid by the applicant. The final number negotiated was \$125,000 toward the ambulance

Mr. Haas asked if any members of the public were present to speak concerning the project. No one came forward.

Mr. Boerger moved to close the hearing. Mr. Rose seconded. all in favor. Mr. Boerger moved to instruct the clerk to prepare a decision granting a special permit requested by the applicant consisting with the designs and plans submitted subject to a condition of a \$125,000 contribution from the applicant to be paid to the general fund to be paid three years from the issuance of the first building permit. Mr. Hunt seconded. All in favor.

Mr. Rose moved and Mr. Boerger seconded to go into executive session to discuss the Mews project. Upon a roll call vote of 6-0-0 the Board went into executive session at 9:50 pm.

The board returned to the public session at 9:55

9:55 The Mews

Mr. Rose read the public hearing notice. Mr. Silverstein explained that the applicant has proceeded, with various technical issues and without the courtesy of a response to the latest letter, to file an appeal with the Housing Appeals Committee claiming a constructive approval. Mr. Silverstein recommended that the Board take a vote on whether to deny without prejudice based on lack of information and lack of sewer capacity.

Mr. Boerger moved to close the hearing. Mr. Hunt seconded. All in favor. Mr. Boerger moved to deny the comprehensive 40B permit requested by the applicant without prejudice due to failure of the applicant to provide information and due to lack of sewer

capacity among other issues. Mr. Hunt seconded. All in favor

10:00 pm-Main Street Realty Trust

Mr. Rose read the public hearing notice. Attorney Philip Nesralla was present on behalf of the applicant. Mr. Nesralla referenced case law for the Town of Pepperill which he interpreted to read that when there is ambiguity, the ambiguity lies to the landowner. He stated he also looked at the Town Warrant which he felt was ambiguous as well. He stated that he addressed this with the Real Estate Bar Association and the Mass Bar Association. Mr. Haas stated that he feels the applicant did not do his due diligence. Mr. Haas stated that at the last meeting the Board asked the applicant to provide something that shows that the map is the "law" over any other material. The Board was polled and the consensus was that the Board does not have authority to change the zoning and feels the applicant should have done more due diligence as the property was clearly never commercially zoned.

Mr. Boerger moved to close the hearing. Mr. Rose seconded. Mr. Boerger moved to instruct the clerk to prepare a decision denying the application and upholding the Zoning Enforcement Officer's decision. Mr. Hunt seconded. All in favor.

10:10 Ryans Way

Mr. Rose read the public hearing notice. Peter Freeman, Mark Flaherty and Matt Dacey were present for the hearing.

Mr. Silverstein stated that he had a conversation with Attorney Freeman regarding concerns that were expressed at the last hearing concerning the density of the project. Mr. Freeman stated reducing the number of units to 28-32 was now palatable to the applicant and that it can be discussed although they still feel 38 units was viable and that they had addressed all issues using that number. There were discussions concerning the Town meeting its requirement for affordable housing but the Board felt that given the time and effort that has been expended, it would seem reasonable to look at negotiating. The Board was polled and the consensus was that a number between 28-30 units would be agreeable. Mr. Dacey stated that they would be willing to contribute \$100,000 toward the ambulance fund with 32 units and not do sidewalks. Both Mr. Rose and Mr. Boerger said they would like to keep the number of units lower than 32. Mr. Hunt, Mr. Dahlen and Mr. Pike stated they were ok with a number of 32 units.

Mr. Haas asked if members of the public wanted to speak about the project.

Don McLelland, 67 Higgins Road, stated he felt the applicant took advantage of the comprehensive permit and feels that if the town has met the low income housing requirement then we don't need to approve this project. Mr. Hunt explained that it would only delay the process and not stop it all together. Mr. Haas added that the Town does need affordable housing.

Paul Hanson, 57 Higgins Road, is not in favor of the project stating it is not helping the town at all.

Mark Guidaboni, Old Orchard Lane, stated that the new development will cost more in taxes to the Town that what the development is giving back.

Arlene Hatch, 147 Wapping Road, is concerned about contaminants in the resources and policing the septic systems through the an association which will be established in the future. She also stated she would like to see a fence go up as a buffer

Mr. Bott discussed payment for consulting fees.

Mr. Hanson said that he feels the Board should consider sidewalks on Route 106 for public safety reasons. There were discussions concerning sidewalks, buffers and fences.

The Board was polled and the consensus was that the hearing should be closed. Mr. Boerger moved to close the hearing. Mr. Pike seconded. All in favor.

The Board has 40 days to render a decision. The deliberation will be continued to August 1, 2007.

General Business

Mylett Decision- Mr. Boerger moved to approve the Special Permit requested by the applicant consistent with the written decision.
Mr. Dahlen seconded. All in favor

It was voted to adjourn the meeting at 11:00 pm